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## **RULES OF NADEX CLEARING, LLC**

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## RULES OF NADEX CLEARING

### 1. GENERAL

#### 101. Definitions.

Unless the context clearly requires otherwise, the following terms shall have the following meanings when used in these Rules:

“**Appeal Panel**” means a panel comprised of individuals appointed by the Board to consider appeals under Rule 602.

“**Applicable Law**” means with respect to any Person, any statute, law, regulation, rule or ordinance of any governmental authority applicable to such Person, including the CEA, CFTC Regulations, and the rules or regulations of any relevant Self-Regulatory Organization.

“**Approved Financial Institution**” has the meaning set forth in Rule 406.

“**Authorized Representative**” means an individual designated by a Clearing Member and registered with Nadex Clearing with authority to act on behalf of the Clearing Member.

“**Board**” means the board of managers of Nadex Clearing, as set forth in the LLC Agreement.

“**Business Day**” means any day (other than Saturdays, Sundays and holidays observed by Nadex Clearing) on which Nadex Clearing is open for business. References in these Rules to a “day” or “Business Day” shall, unless the context otherwise requires, mean the “Business Day” corresponding to the trading day of the Exchange.

“**CEA**” means the Commodity Exchange Act, as it may be amended from time to time.

“**CFTC**” means the U.S. Commodity Futures Trading Commission.

“**CFTC Regulations**” means the rules, regulations and interpretations promulgated by the CFTC pursuant to the CEA, as in effect from time to time.

“**Clearing Member**” means a Person that is approved by Nadex Clearing for the submission of Contracts for clearing as provided in Rule 301 and that is party to a Clearing Member Agreement with Nadex Clearing.

“**Clearing Member Agreement**” means the agreement for clearing privileges between Nadex Clearing and a Clearing Member.

“**Committee**” means a committee established by the Board.

**“Contract”** means any contract, agreement or transaction on a commodity (as such term is defined in the Act or CFTC Regulations), which has been approved for clearing by Nadex Clearing pursuant to these Rules.

**“Customer”** shall have the meaning set forth in CFTC Regulation 1.3(k).

**“Customer Account”** means an account established by a Clearing Member with Nadex Clearing in which the Clearing Member maintains trades, positions and Margin solely for Customers.

**“Default”** means, with respect to a Clearing Member, if such Clearing Member (a) fails to satisfy any of its Obligations, (b) fails to deliver funds within the time established therefor by Nadex Clearing, (c) is expelled or suspended from the Exchange, Nadex Clearing or any Self-Regulatory Organization, (d) fails to meet the minimum capital and other financial requirements of Nadex Clearing, or (e) is Insolvent.

**“Disciplinary Panel”** means a panel comprised of individuals appointed by the Board to conduct disciplinary proceedings under Rule 604.

**“Eligible Securities”** means direct obligations of the United States Government, and which have such maximum time to maturity as Nadex Clearing may prescribe from time to time.

**“Emergency”** shall have the meaning set forth in Rule 208.

**“Exchange”** means North American Derivatives Exchange, Inc. and its respective successors, by merger or otherwise.

**“Government Agency”** means the CFTC and/or any other governmental agency or department regulating the activities of a Clearing Member.

**“Guaranty Fund”** means the fund comprising the monies, securities, and instruments deposited by Clearing Members pursuant to Rule 504 and the Nadex Clearing Contribution.

**“Initial Margin”** means the margin required to be charged by a Clearing Member to a Customer with respect to the Contracts carried by such Clearing Member for such Customer. As used in the Rules, “Initial Margin” includes maintenance margin.

**“Insolvent”** and **“Insolvency”** means the occurrence of any of the following events with respect to a Clearing Member:

(a) The Clearing Member is determined to be insolvent by a Government Agency or Self-Regulatory Organization;

(b) If the Clearing Member is a member of the Securities Investor Protection Corporation, a court of competent jurisdiction finds that the Clearing

Member meets any one of the conditions set forth in clauses (A), (B), (C), or (D) of Section 5(b)(1) of the Securities Investor Protection Act of 1970;

(c) The entry or the making of a decree or order by a court, Government Agency or other supervisory authority of competent jurisdiction (i) adjudging the Clearing Member as bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization, arrangement, liquidation, dissolution, adjustment or composition of or in respect of the Clearing Member under the Bankruptcy Code or any other applicable federal, state or other U.S. or non-U.S. law, including any bankruptcy, insolvency, reorganization, liquidation, dissolution, or similar law, (iii) appointing a receiver, custodian, liquidator, provisional liquidator, administrator, provisional administrator, assignee, trustee, sequestrator or other similar official for the Clearing Member or for any substantial part of its property, (iv) ordering the winding up or liquidation of the Clearing Member's affairs, or (v) consenting to the institution by the Clearing Member of proceedings to be adjudicated as a bankrupt or insolvent;

(d) The filing by the Clearing Member of a petition, or any case or proceeding, seeking reorganization or relief under the Bankruptcy Code or any other applicable federal, state or other U.S. or non-U.S. law, including any bankruptcy, insolvency, reorganization, liquidation, dissolution, or similar law, or the consent by the Clearing Member to the filing of any such petition, case or proceeding or to the appointment of a receiver, custodian, liquidator, provisional liquidator, administrator, provisional administrator, assignee, trustee, sequestrator or other similar official for the Clearing Member or for any substantial part of its property, or the making by the Clearing Member of an assignment for the benefit of its creditors, or the admission by the Clearing Member in writing of its inability to pay its debts generally as they become due, or the taking of corporate or similar action by the Clearing Member in furtherance of the foregoing; or

(e) The failure of an Approved Financial Institution to timely make Margin payments on behalf of such Clearing Member.

As used in paragraphs (a) through (e) above, the term "Clearing Member" includes a 5% Owner of such Clearing Member. Notwithstanding the foregoing, a Clearing Member shall not be deemed to be Insolvent in the event such Clearing Member (without being deemed to have admitted its liability thereunder) provides or posts a bond, indemnity, or guaranty from a third party that Nadex Clearing deems satisfactory to ensure the performance of the Clearing Member's Obligations.

**"LLC Agreement"** means the Limited Liability Company Agreement of Nadex Clearing, as amended or restated from time to time.

**"Margin"** means Original Margin or Variation Margin paid or payable by or to a Clearing Member to or by Nadex Clearing.

“**Nadex Clearing**” means Nadex Clearing, LLC, a Delaware limited liability company.

“**Nadex Clearing Contribution**” means the deposit of cash or Eligible Securities by Nadex Clearing into the Guaranty Fund.

“**Obligations**” means all financial obligations of a Clearing Member, however arising, whether absolute or contingent, direct or indirect, due or to become to be due, arising under these Rules or such Clearing Member’s agreements with Nadex Clearing.

“**Officer**” has the meaning set forth in Rule 205.

“**Original Margin**” means the deposits required by Nadex Clearing in connection with the initiation of a Contract.

“**Person**” means an individual, sole proprietorship, partnership, limited liability company, association, firm, trust, corporation or other entity, as the context may require.

“**President**” means the President of Nadex Clearing as appointed by the Board.

“**Removal Event**” means (a) the termination of the Clearing Member Agreement; (b) a materially false or misleading representation or warranty made by the Clearing Member to Nadex Clearing under or in connection with any agreement between Nadex Clearing and the Clearing Member; (c) the breach by the Clearing Member of the Rules or any of the terms or provisions of any agreement between Nadex Clearing and the Clearing Member which is not remedied promptly after notice from Nadex Clearing; or (d) a Default by the Clearing Member.

“**Rule**” means a Rule of Nadex Clearing.

“**SEC**” means the U.S. Securities and Exchange Commission.

“**Self-Regulatory Organization**” shall mean any futures or securities exchange, derivatives clearing organization, securities clearing agency, the National Futures Association and the Financial Industry Regulatory Authority.

“**Settlement Price**” has the meaning set forth in Rule 411.

“**Transfer Trade**” has the meaning set forth in Rule 409.

“**Variation Margin**” means payments or collections of Variation Margin required by Nadex Clearing due to market price change as described in Rule 404.

## **102. Interpretation.**

In these Rules, unless the context clearly requires otherwise, (a) words in the singular include the plural and words in the plural include the singular, (b) any gender includes each other gender, (c) references to statutory provisions include those provisions, and any



rules or regulations promulgated thereunder, as amended, and (d) all uses of the word “including” should be construed to mean “including, but not limited to.” Headings included herein are for convenience purposes only and do not form a part of these Rules.

**103. Date and Time References.**

Unless otherwise specified, all references to dates, times or time periods shall refer to, or be measured in accordance with the time in Chicago, Illinois.

**104. Conflicts.**

In the event of a conflict between any Rules of general application and the Rules relating to particular types of transactions, the transaction-specific Rules will prevail.

## **2. GOVERNANCE**

### **201. Purpose, Powers and Authority.**

- (a) Nadex Clearing operates to clear Contracts for its Clearing Members.
- (b) Nadex Clearing has the power and authority to operate and regulate its clearance and settlement facilities to ensure that such facilities are not used for any improper purpose and to establish and enforce Rules and procedures to reduce systemic risk and facilitate the orderly clearing of Contracts through Nadex Clearing by Clearing Members.
- (c) These Rules specify the process by which a Person may become a Clearing Member and the terms and conditions on which Nadex Clearing will clear Contracts. These Rules are binding on all Clearing Members.

### **202. Board.**

The Board shall have control and management of the affairs and business of Nadex Clearing and shall have the powers and duties set forth in the LLC Agreement. Without limiting the generality of the foregoing, the Board shall have the power to: (a) adopt, amend, implement and repeal such Rules, not contrary to Applicable Law, as will in its judgment best promote and safeguard the interests of Nadex Clearing; and (b) render interpretations of the Rules, which shall be binding on all Persons having dealings with Nadex Clearing, directly or through Clearing Members.

### **203. Committees.**

- (a) The Board may establish such Committees as it may from time to time deem necessary or advisable and appoint Board members or other individuals to serve on such Committees and delegate powers to one or more Committees.
- (b) A Committee shall operate in accordance with its charter and shall take such actions as may be required by the Rules or as otherwise delegated to it by the Board.
- (c) All information and documents provided to a Committee and all deliberations and documents related thereto shall be treated as non-public and confidential and shall not be disclosed, except as required by Applicable Law or as necessary to further the business and affairs of Nadex Clearing.
- (d) The actions of each Committee shall be the subject to review by the Board.

### **204. Eligibility.**

No Person may serve as an Officer or a member of the Board, or any other disciplinary committee, arbitration panel or oversight panel of Nadex Clearing if such Person:

- (a) Was found within the past three years by a final decision of a self-regulatory organization, an administrative law judge, a court of competent jurisdiction or the CFTC to have committed a disciplinary offense;
- (b) Entered into a settlement agreement within the past three years in which any of the findings or, in absence of such findings, any of the acts charged included a disciplinary offense;
- (c) Is currently suspended from trading on any market subject to CEA regulation, is suspended or expelled from membership from any self-regulatory organization, is serving any sentence of probation or owes any portion of a fine imposed pursuant to either:
  - (i) A finding by a final decision of a self-regulatory organization, an administrative law judge, a court of competent jurisdiction or the CFTC that such Person committed a disciplinary offense; or
  - (ii) A settlement agreement in which any of the findings or, in absence of such findings, any of the acts charged included a disciplinary offense;
- (d) Is currently subject to an agreement with the CFTC or any self-regulatory organization not to apply for registration with the CFTC or membership in any self-regulatory organization;
- (e) Is currently subject to or has had imposed on him or her within the past three years a CFTC registration revocation or suspension in any capacity for any reason, or has been convicted within the past three years of any of the felonies listed in section 8a(2)(D)(ii) through (iv) of the CEA; or
- (f) Is currently subject to a denial, suspension or disqualification from serving on the disciplinary committee, arbitration panel or governing board of any self-regulatory organization as that term is defined in section 3(a)(26) of the Securities Exchange Act of 1934.

For purposes of this Rule 204, the terms “self-regulatory organization,” “disciplinary committee,” “arbitration panel,” “oversight panel,” “final decision,” “disciplinary offense,” and “settlement agreement” have the meanings set forth in CFTC Regulation 1.63(a), as amended from time to time.

## 205. **Officers.**

The Board shall appoint officers of Nadex Clearing, as it may deem necessary or appropriate from time to time (such Persons, “**Officers**”), and delegate to such Officers, subject to its oversight, the power and authority to manage the business and affairs of Nadex Clearing and to establish and enforce rules and procedures for the conduct of business by Nadex Clearing. Any Officer may also be a director, officer, partner or employee of Nadex Clearing or any of its affiliates.

**206. Restrictions on Certain Persons Who Possess Material, Non-Public Information.**

- (a) No member of the Board or any Committee shall use or disclose any material, non-public information obtained in connection with the performance of his or her official duties, for any purpose other than the performance of his or her official duties.
- (b) No employee or agent of Nadex Clearing shall (i) trade in any commodity interest if such employee or agent of Nadex Clearing has access to material non-public information concerning such commodity interest or (ii) disclose to any other Person material, non-public information obtained in connection with such employee or agent's employment or agency, as the case may be, for any purpose other than the performance of his or her official duties.
- (c) For purposes of this Rule 206, the terms "material information," "non-public information" and "commodity interest" shall have the meanings ascribed to them in CFTC Regulation 1.59.

**207. Conflicts of Interest.**

- (a) Definitions. For purposes of this Rule 207, the following definitions shall apply:
  - (i) The term "Clearinghouse Board" shall mean the Board and any Committee thereof duly authorized to take action or to recommend the taking of action on behalf of Nadex Clearing.
  - (ii) The term "disciplinary committee" has the meaning given that term in CFTC Regulation 1.69.
  - (iii) The term "family relationship of a Person" shall mean such Person's spouse, co-habitator, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law.
  - (iv) The term "member's affiliated firm" shall mean a firm in which a member of the relevant deliberating body is an employee or a "principal," as defined in CFTC Regulation 3.1(a).
  - (v) The term "named party in interest" shall mean a Person that is identified by name as a subject of any matter of a Rule enforcement nature or any disciplinary matter or appeal being considered by the Board.
  - (vi) The term "oversight panel" has the meaning given that term in CFTC Regulation 1.69.
  - (vii) The term "significant action" shall mean (i) any actions or Rule changes which address an Emergency, or (ii) any changes in Margin levels that are designed to respond to extraordinary market conditions or otherwise

likely to have a substantial effect on prices in any Contract and that are implemented without the CFTC's prior approval.

(b) Named Party in Interest Conflict.

- (i) No Officer of Nadex Clearing or member of Nadex Clearing Board, a disciplinary committee or oversight panel shall knowingly participate in such body's deliberations or voting in any matter involving a named party in interest where such officer or member (1) is a named party in interest, (2) is an employer, employee or fellow employee of a named party in interest, (3) is associated with a named party in interest through a broker association, (4) has a family relationship with a named party in interest or (5) has any other significant, ongoing business relationship with a named party in interest.
- (ii) Prior to consideration of any matter involving a named party in interest, each member of the deliberating body who does not choose to abstain from deliberations and voting shall disclose to deliberating body, in writing, whether such member has or may have one of the relationships listed in paragraph (b)(i) of this Rule 207 with a named party in interest.
- (iii) The deliberating body, without the participation of any member with a potential conflict of interest listed in paragraph (b)(i) of this Rule 207, shall determine whether any member of the relevant deliberating body is subject to a conflicts restriction under this paragraph (b). Such determination shall be based upon a review of the following information:
  - (1) Information provided by such member pursuant to clause (ii) above; and
  - (2) Any other source of information that is held by or reasonably available to Nadex Clearing.

(c) Substantial Financial Interest in a Significant Action.

- (i) Prior to consideration of any significant action, each member of the deliberating body who does not choose to abstain from deliberations and voting shall disclose to such deliberating body any direct and substantial financial interest such member has with respect to such potential significant action.
- (ii) The deliberating body shall determine whether any member of the relevant deliberating body is subject to a conflicts restriction under this paragraph (c). Such determination shall be based upon a review of the following information:
  - (1) Information provided by such member pursuant to clause (i) above; and

- (2) Any other source of information that is held by or reasonably available to Nadex Clearing.
- (d) If all of the members of Nadex Clearing Board, Committee or other deliberating body, as applicable, are subject to conflicts restrictions with respect to a matter subject to a vote by the Board, Committee or other deliberating body, as applicable, the President will appoint a panel of individuals who are not subject to conflicts restrictions with respect to such matter, which will have the same authority and powers over such matter that the Board, Committee or other deliberating body would have if the members thereof were not subject to conflicts restrictions with respect to such matter.
- (e) The minutes of any meeting to which the conflicts determination procedures set forth in this Rule 207 apply shall reflect the following information:
  - (i) The names of all members of the relevant deliberating body who attended such meeting in person or who otherwise were present by electronic means;
  - (ii) The name of any member of the relevant deliberating body who voluntarily abstains from deliberations or voting on a matter and the reason for the abstention, if stated; and
  - (iii) Position and other information that was reviewed or disclosed for each member of the relevant deliberating body.
- (f) No member of the Board or any Committee or other deliberating body shall use or disclose for any purpose other than the performance of his or her official duties and responsibilities as a member of the Board, a Committee or such deliberating body any material, non-public information obtained as a result of such member's duties and responsibilities as a member of the Board, Committee or other deliberating body. No member of the Board, a Committee or a deliberating body shall, directly or indirectly, disclose or use at any time, either during his or her association with Nadex Clearing or thereafter, any confidential information of which the member of the Board, a Committee or a deliberating body becomes aware except when reporting to or at the direction of the Board, when requested by a Government Agency or when compelled to testify in any judicial or administrative proceeding. Each member of the Board, a Committee or a deliberating body in possession of confidential information shall take all appropriate steps to safeguard the information and to protect it against disclosure, misuse, espionage, loss and theft. For purposes of this paragraph (f), the terms "material information" and "non-public information" have the meaning set forth in CFTC Regulation 1.59(a).

## **208. Emergencies.**

- (a) During an Emergency, the Board may implement temporary emergency procedures and rules ("**Emergency Rules**"), subject to applicable provisions of

the CEA and CFTC Regulations. If the President (or, in the event that the President is unavailable, the Chief Risk Officer) determines that Emergency Rules must be implemented with respect to an Emergency before a meeting of the Board can reasonably be convened, then the President (or, if applicable, the Chief Risk Officer) shall have the authority, without Board action, to implement any Emergency Rules with respect to such Emergency that he or she deems necessary or appropriate to respond to such Emergency.

- (b) Pursuant to this Rule 208, Emergency Rules may require or authorize Nadex Clearing, the Board, any Committee, the President (or, if the President is unavailable, any other Officer of Nadex Clearing) to take actions necessary or appropriate to respond to the Emergency, including, but not limited to, the following:
  - (i) Suspending or curtailing clearing or limiting clearing to liquidation only (in whole or in part);
  - (ii) Extending or shortening the expiration date and/or the last settlement date for Contracts;
  - (iii) Providing alternative settlement mechanisms;
  - (iv) Ordering the liquidation of Contracts, the fixing of a Settlement Price, or the reduction of positions;
  - (v) Extending, limiting or changing the hours of operation of Nadex Clearing;
  - (vi) Temporarily modifying or suspending any provision of the Rules;
  - (vii) Changing the amount of money to be paid in connection with a Contract, whether previously or thereafter delivered;
  - (viii) Requiring Clearing Members to meet special Margin requirements;
  - (ix) Imposing or modifying price limits; and/or
  - (x) Imposing or modifying position limits.
- (c) For the purposes of this Rule 208, “**Emergency**” is defined as any occurrence or circumstances which, in the opinion of the Board, the President or an Officer (as provided in paragraphs (a) and (b)), requires immediate action, and that threatens, or may threaten, the fair and orderly settlement or integrity of any Contract, including, without limitation, the following:
  - (i) Any circumstance that may materially affect the performance of a Contract;

- (ii) Any action taken by the United States government, a foreign government, Government Agency, Self-Regulatory Organization, state or local governmental body, or market or exchange (foreign or domestic) that may have a material adverse effect on the clearing of Contracts through Nadex Clearing or the settlement, legality or enforceability of any Contract;
- (iii) Any actual, attempted or threatened corner, squeeze, congestion, manipulative activity or undue concentration of positions in a Contract;
- (iv) Any circumstance that may have a severe, adverse effect upon the functions and facilities of Nadex Clearing, including, but not limited to, acts of God, pandemics, fire or other natural disasters, bomb threats, acts of terrorism or war, severely inclement weather, or failure or malfunction of all or a portion of the clearing systems of Nadex Clearing, or other system breakdowns or interruptions such as power, computer, communication or transportation systems or the Internet;
- (v) The Insolvency of any Clearing Member or the imposition of any injunction or other restraint by any Government Agency, court or arbitrator upon a Clearing Member which may affect the ability of a Clearing Member to satisfy its Obligations;
- (vi) Any circumstance in which it appears to the Board that a Clearing Member:
  - (1) Has failed to perform on a Contract;
  - (2) Is Insolvent;
  - (3) Is otherwise in Default;
  - (4) Is in such financial or operational condition or is conducting business such that the Clearing Member cannot be permitted to continue in business without jeopardizing the safety of funds of Nadex Clearing, Clearing Members or the funds of Customers; or
- (vii) Any other unusual, unforeseeable or adverse circumstance as determined by the Board or the President (or, as applicable, the Chief Risk Officer).

When Nadex Clearing determines that the Emergency has been reduced sufficiently to allow Nadex Clearing to resume normal functioning, any such actions will be terminated.

- (d) Whenever Nadex Clearing takes action to respond to an Emergency (including, without limitation, the actions set forth in paragraph (b) above), it will, where possible, ensure that notice is timely given to Clearing Members.



- (e) Nadex Clearing will use reasonable efforts to notify the CFTC prior to implementing, modifying or terminating an Emergency Rule. If such prior notification is not possible or practicable, Nadex Clearing will notify the CFTC as soon as reasonably practicable, but in all circumstances within twenty-four hours of the implementation, modification or termination of such Emergency Rule.
- (f) Upon taking any action in response to an Emergency, Nadex Clearing will document the decisions and deliberations related to such action. Such documentation will be kept for at least five years following the date on which the Emergency ceases to exist or to affect Nadex Clearing, and all such documentation will be provided to the CFTC upon request.

### **3. CLEARING MEMBERS**

#### **301. General Eligibility Requirements of Clearing Members.**

- (a) Subject to Rule 301(b), each applicant for qualification as a Clearing Member must satisfy the following requirements:
  - (i) It shall be a corporation, limited liability company, partnership or other entity approved by Nadex Clearing, duly organized and in good standing in its state of organization;
  - (ii) It shall be qualified to do business in the State of Illinois or have an agency agreement in place with an entity qualified to do business in the State of Illinois that provides an agent for service of process and other communications from Nadex Clearing in connection with the business of the Clearing Member;
  - (iii) It shall enter into a Clearing Member Agreement with Nadex Clearing, pursuant to which it shall agree, among other things, to: (1) abide by all Nadex Clearing Rules and to cooperate in their enforcement; (2) be responsible, even after it has withdrawn as a Clearing Member, for any violations of Nadex Clearing Rules committed by it while it was a Clearing Member; and (3) continue to meet all requirements applicable to Clearing Members, including all financial requirements provided by these Rules;
  - (iv) It shall have received all necessary approvals and consents from all applicable regulatory authorities and Government Agencies to permit it to conduct the business of a Clearing Member;
  - (v) If it is clearing Contracts on behalf of Customers, it shall be registered as a futures commission merchant with the CFTC;
  - (vi) It shall have established a satisfactory relationship with, and have designated to Nadex Clearing, an Approved Financial Institution;
  - (vii) It shall maintain back-office facilities staffed with experienced and competent personnel or have entered into a facilities management agreement in form and substance acceptable to Nadex Clearing;
  - (viii) It shall be engaged in or demonstrate immediate capacity to engage in the conduct of the business of a Clearing Member;

- (ix) It shall maintain minimum regulatory capital in excess of the greater of (1) \$5,000,000 and (2) any applicable capital requirements imposed on applicant by the Commission, another Government Agency or Self-Regulatory Organization; and
- (x) It shall continuously satisfy any minimum commercial, integrity, financial, credit, operational capability and competence standards, as may be established by Nadex Clearing from time to time.
- (b) The Board may, in its sole discretion, grant exemptions to the requirements set forth in this Rule 301 for Clearing Members if it determines that such an exemption will not jeopardize the financial integrity of Nadex Clearing.

**302. Application and Approval of Clearing Member Status.**

- (a) Applicants for Clearing Member status shall submit an application in the form prescribed by Nadex Clearing, financial statements and any other documentation as Nadex Clearing shall require and shall enter into a Clearing Member Agreement with Nadex Clearing.
- (b) Nadex Clearing may review the books and records of any applicant or Clearing Member and take such other action as it may deem appropriate to investigate an applicant's or Clearing Member's qualifications.
- (c) Each Clearing Member shall at time of application and thereafter as required by Nadex Clearing submit statements of its financial condition and other financial records as shall be prescribed from time to time.
- (d) Nadex Clearing shall have the sole discretion to determine whether any applicant, or any existing Clearing Member, meets its clearing privileges qualifications. Nadex Clearing shall have no liability to any applicant or Clearing Member who is denied or loses Clearing Member status.
- (e) The Board shall have final authority to grant or deny an application to become a Clearing Member and shall deny the application of any Person which does not meet the eligibility requirements established pursuant to Rules 301, 302 and 303.
- (f) If the Board grants an application to become a Clearing Member, Nadex Clearing shall promptly give the applicant written notice thereof, specifying each Nadex Clearing Contract the applicant is entitled to clear. The applicant shall thereafter become a Clearing Member at such time as the applicant has (i) deposited such amount in the Guaranty Fund as may be required pursuant to Rule 504, and (ii) filed with Nadex Clearing such agreements, undertakings and documents as Nadex Clearing may require; provided, however, that if such applicant has not complied with the foregoing provisions within 30 days after the applicant was given written notice of approval of its application, the application shall be deemed to have been withdrawn.

- (g) If, in accordance with paragraph (d) of this Rule 302, the Board denies an application to become a Clearing Member, Nadex Clearing shall give the applicant written notice of the Board's decision, setting forth the grounds therefor, and such decision shall be the final action of Nadex Clearing.
- (h) By virtue of obtaining clearing privileges, a Clearing Member shall not obtain any equity or other interest in Nadex Clearing, including voting rights or rights to receive any dividends or other distributions, whether arising from a dissolution, merger, consolidation involving Nadex Clearing or otherwise. All such rights shall be owned exclusively by the members of Nadex Clearing, as specified in the LLC Agreement.

### **303. Parent Company, Cross-Ownership Guarantees.**

- (a) Parent Guaranty Requirement
  - (i) Subject to the last sentence of this subparagraph (i), each Clearing Member shall provide and maintain with Nadex Clearing a roster of every Person (including natural persons) that directly or indirectly is the beneficial owner (determined in accordance with Rule 13d-3 under the Exchange Act) of 5% or more of any class of equity security of the Clearing Member (a "**5% Owner**"). For purposes of this Rule 303, the term "equity security" shall include any stock, partnership interest, membership interest or similar security, or any security convertible into such a security, or any option, warrant or right to subscribe to or purchase such a security, or any other instrument or right that Nadex Clearing deems to be of similar nature and considers necessary or appropriate to treat as an equity security. If the intermediary's shareholders, partners or members are not natural persons or public reporting companies subject to Sections 12 or 15(d) of the Exchange Act, the Clearing Member shall continue the chain of ownership of 5% Owners until natural persons or public reporting companies subject to Sections 12 or 15(d) of the Exchange Act are listed.
  - (ii) Nadex Clearing may require a Clearing Member to submit to Nadex Clearing a written guarantee, on a form provided by Nadex Clearing, from each 5% Owner pursuant to which such 5% Owner shall guarantee all Obligations arising out of accounts cleared by the Clearing Member that are:
    - (1) Non-Customer Accounts, including proprietary accounts as defined in CFTC Regulation 1.3(y), of the Clearing Member; and
    - (2) Accounts carried by another futures commission merchant if such accounts would be considered non-Customer Accounts, including proprietary accounts as defined in CFTC Regulation 1.3(y), of the Clearing Member, if carried directly by the Clearing Member.

Notwithstanding anything herein to the contrary, any guarantee required by Nadex Clearing pursuant to this paragraph (ii) shall not apply to any Obligations of the Clearing Member to Nadex Clearing arising under Rule 503(c)(ii) resulting from a remaining deficiency in a Customer Account after the setoffs referred to in Rule 503(c)(i). In addition, Nadex Clearing may only require each 5% Owner to guarantee his, her or its share of the Clearing Member's Obligations pursuant to this paragraph (ii) in proportion to his, her or its ownership interest in the Clearing Member (but not in duplication of amounts paid by another 5% Owner that controls, is controlled by or under common control with such 5% Owner); provided, however, that any 5% Owner owning 50% or more of the Clearing Member may be required to guarantee the full amount of the Clearing Member's Obligations pursuant to this paragraph (ii).

- (b) Cross-Ownership Guaranty. If any Person directly or indirectly controls, owns 10% or more of, or has the right to 10% or more of the profits of two or more Clearing Members, then Nadex Clearing may require each such Clearing Member to submit to Nadex Clearing a written guarantee, on a form provided by Nadex Clearing, of the Obligations of the other such Clearing Member(s) to Nadex Clearing.

#### **304. Duties and Responsibilities of Clearing Members.**

Each Clearing Member shall:

- (a) Comply with and act in a manner consistent with, and cause its Authorized Representatives and employees to comply with an act in a manner consistent with, the Rules;
- (b) Guarantee and assume responsibility for all Contracts submitted by it or for which it authorizes another Person to submit in its name for clearing;
- (c) Immediately inform Nadex Clearing of any changes to the account information provided by the Clearing Member;
- (d) Keep the passwords assigned by Nadex Clearing confidential;
- (e) At all times have an Approved Financial Institution validly appointed and acting on its behalf to pay and receive Margin payments;
- (f) Promptly review and, if necessary, respond to all communications sent by Nadex Clearing;
- (g) Be responsible for violations of the Rules committed by it, its Authorized Representative or employees;
- (h) Keep, or cause to be kept, complete and accurate books and records, including, without limitation, all books and records required to be maintained with Nadex

Clearing or pursuant to the CEA or the CFTC Regulations, for at least five years, and make such books and records available for inspection by Nadex Clearing, the CFTC or other Government Agency;

- (i) Not knowingly mislead or conceal any material fact or matter in any dealings or filings with Nadex Clearing or in response to any proceeding;
- (j) Cooperate with Nadex Clearing and any Government Agency in any inquiry, investigation, audit, examination or proceeding;
- (k) Provide appropriate staff in its offices during specified hours, on Business Days and otherwise, when such is deemed necessary by Nadex Clearing to ensure the integrity of its systems or as otherwise deemed necessary for the protection of the Nadex Clearing;
- (l) Have written risk management policies and procedures in place to ensure it is able to perform certain basic risk and operational functions at all times and to make information regarding its risk management policies, procedures and practices available to Nadex Clearing or the CFTC upon request. At a minimum, the following areas must be addressed in the Clearing Member's policies and procedures, taking into account the Clearing Member's business and product mix:
  - (i) Monitoring the credit risks of accepting trades, including give-up trades, of its Customers;
  - (ii) Monitoring the risks associated with proprietary trading;
  - (iii) Limiting the impact of significant market moves through the use of tools such as stress testing or position limits;
  - (iv) Maintaining the ability to monitor account activity on an intraday and overnight basis;
  - (v) Ensuring order entry systems, including third party systems connected to any exchange, include the ability to set automated credit controls or position limits or requiring a firm employee to enter orders; and
  - (vi) Defining sources of liquidity for increased settlement obligations.
- (m) Observe high standards of integrity, commercial honor, fair dealing, and just and equitable principles of trade in relation to any aspect of its business connected with or concerning Nadex Clearing.

**305. Authorized Representative.**

- (a) Each Clearing Member shall designate one or more Authorized Representatives to sign all instruments, correct errors, perform such other duties as may be required under the Rules and transact all business in connection with the operations of

Nadex Clearing. Each Clearing Member must provide Nadex Clearing with current contact and other requested information for each of its Authorized Representatives.

- (b) To designate an Authorized Representative, a Clearing Member must provide the information requested and conform to the procedures and requirements established by Nadex Clearing. By agreeing to become an Authorized Representative, an individual agrees to be bound by the duties and responsibilities of an Authorized Representative and to be subject to, and comply with, the Rules and Obligations to the extent applicable.
- (c) Nadex Clearing will promptly notify a Clearing Member of the approval of nominated Authorized Representatives and will maintain a list of all approved Authorized Representatives for each Clearing Member. Nadex Clearing shall promptly notify the Clearing Member if Nadex Clearing (i) declines to approve the designation, (ii) revokes the designation, or (iii) suspends the designation of an Authorized Representative.
- (d) An Authorized Representative who is suspended remains subject to the Rules and Nadex Clearing's jurisdiction throughout the period of suspension.
- (e) To request the termination of the designation of an Authorized Representative, the Clearing Member or the Authorized Representative must notify Nadex Clearing providing the information and complying with the procedures and requirements established by Nadex Clearing.
- (f) An Authorized Representative remains subject to the Rules and the jurisdiction of Nadex Clearing for acts done and omissions made while registered as such, and a proceeding relating to an individual whose designation as an Authorized Representative has been terminated or suspended shall occur as if the Authorized Representative were still registered as such.

**306. Restriction on or Termination of Clearing Privileges.**

- (a) If (x) a Removal Event occurs with respect to a Clearing Member, or (y) Nadex Clearing determines that the financial or operational condition of a Clearing Member or one of its affiliates is such that to allow the Clearing Member to continue its operation as a Clearing Member could adversely affect Nadex Clearing or cleared markets (whether or not such Clearing Member continues to meet the required minimum financial requirements), Nadex Clearing may:
  - (i) Allow such Clearing Member to submit Contracts for clearing solely for its proprietary account;
  - (ii) Limit or restrict the type of Contracts that may be cleared by such Clearing Member in any of its accounts with Nadex Clearing;

- (iii) Limit or restrict the number of Contracts that are permitted to be maintained by such Clearing Member in any of its accounts with Nadex Clearing;
  - (iv) Decline to accept new trades or positions in Contracts for the accounts of the Clearing Member;
  - (v) Increase such Clearing Member's Margin and Guaranty Fund requirements and/or require such Clearing Member to deposit the same in cash or Eligible Securities in proportions different than those that are applicable to Clearing Members generally;
  - (vi) Allow such Clearing Member to submit Contracts for liquidation only;
  - (vii) Prohibit such Clearing Member from withdrawing excess Original Margin;
  - (viii) Cause open Contracts in the proprietary accounts or Customer Account of the Clearing Member to be transferred to another Clearing Member;
  - (ix) Cause open Contracts to be settled in cash or liquidated;
  - (x) Impose such additional capital, Margin, financial reporting or other requirements as Nadex Clearing shall deem appropriate for the protection of Nadex Clearing and its Clearing Members; and
  - (xi) Terminate the Clearing Member's membership in Nadex Clearing.
- (b) Nadex Clearing has no obligation to clear trades made on the Exchange or any other trading facility where such Clearing Member does not have trading privileges or is not approved for the clearing privileges by the relevant facility.
  - (c) A Person once qualified as a Clearing Member may voluntarily withdraw from Clearing Member status and terminate its clearing privileges upon the approval of Nadex Clearing, which approval shall be granted not later than 30 days following (i) the liquidation or, with the approval of Nadex Clearing, transfer to another Clearing Member of all open positions in the Clearing Member's accounts at Nadex Clearing, and (ii) the satisfaction of all Obligations of the withdrawing Clearing Member; provided, however that such Person shall remain subject to, and responsible for any violation of, the Rules, interpretations and policies of Nadex Clearing committed by such Person while a Clearing Member, notwithstanding any termination of clearing privileges and Clearing Member status.
  - (d) When a Clearing Member voluntarily withdraws from membership or its membership is terminated, all Obligations of the Clearing Member to Nadex Clearing, of whatever nature or kind, shall be accelerated and become due and payable upon the effective date of such withdrawal or termination. The Clearing



Member's Guaranty Fund deposit and any other deposits required by Nadex Clearing will not be released until Nadex Clearing determines that all such Clearing Member's Obligations have been settled and all sums owing to Nadex Clearing have been paid.

- (e) Any disputes which arise while a Clearing Member which relate to or arise out of any transaction with Nadex Clearing or status of a Clearing Member in Nadex Clearing shall be resolved in accordance with the Rules.

**307. Adequate Assurances.**

If Nadex Clearing has reason to believe that a Clearing Member may fail to comply with any of the Rules, it may require the Clearing Member to provide it, within such timeframe, in such detail, and in such manner as Nadex Clearing shall determine, with adequate assurances that the Clearing Member shall not violate any of the Rules.

**308. Notices Required of Clearing Members.**

- (a) Each Clearing Member shall immediately notify Nadex Clearing, orally and in writing, of:
  - (i) Any Default of the Clearing Member or any failure or inability of the Clearing Member to meet its Obligations;
  - (ii) Any failure of the Clearing Member to remain in compliance with the minimum capital or "early warning" requirements of any Government Agency or Self-Regulatory Organization;
  - (iii) If such Clearing Member knows or has reason to believe that its adjusted net capital has fallen below Nadex Clearing's minimum capital requirements;
  - (iv) Any damage to, or failure or inadequacy of, the systems, facilities or equipment of the Clearing Member used to perform the Clearing Member's obligations under or in connection with Contracts that is not promptly remedied;
  - (v) If such Clearing Member fails to comply with additional accounting, reporting, financial and/or operation requirements prescribed by Nadex Clearing;
  - (vi) If such Clearing Member is a futures commission merchant, any failure to maintain funds in any Customer Account sufficient to comply with applicable CFTC Regulations;
  - (vii) Any failure to maintain current books and records;

- (viii) Any refusal of admission to, withdrawal of any application for membership in, any suspension, expulsion, bar, fine, censure, denial of membership, registration or license, withdrawal of any application for registration, cease and desist order, temporary or permanent injunction, denial of trading privileges or clearing privileges, or any other sanction or discipline through an adverse determination, voluntary settlement or otherwise, by the CFTC, the SEC, any commodity or securities exchange, clearing organization, any Self-Regulatory Organization or other business or professional association;
- (ix) The imposition of any restriction or limitation on the business conducted by the Clearing Member on or with any securities or futures clearing organization or exchange (including, without limitation, any contract market, swap execution facility or other trading facility), other than restrictions or limitations imposed generally on all Clearing Members of or Clearing Members of such clearing organization or exchange;
- (x) Any failure by such Clearing Member, or any guarantor or commonly owned or controlled Clearing Member, to perform any of its material contracts, obligations or agreements;
- (xi) Any determination that it, or any guarantor or commonly owned or controlled Clearing Member, will be unable to perform any of its material contracts, obligations or agreements;
- (xii) The insolvency, bankruptcy or receivership of such Clearing Member, or of any guarantor or commonly owned or controlled Clearing Member;
- (xiii) The institution of any proceeding by or against the Clearing Member, any affiliate of the Clearing Member, or any 5% Owner of the Clearing Member, under any provision of the bankruptcy laws of the United States, or under the Securities Investor Protection Act of 1970, any other statute or equitable power of a court of like nature or purpose, in which such Clearing Member or Person is designated as the bankrupt, debtor or equivalent, or a receiver is appointed, or if a receiver, trustee or similar official is appointed for the Clearing Member, such Person, or its or their property;
- (xiv) The receipt by such Clearing Member, or the filing by such Clearing Member with a Self-Regulatory Organization, of a notice of material inadequacy, including as provided in CFTC Regulation 1.16(d)(2) or SEC Rule 17a-5(g)(3), in each case as applicable to such Clearing Member;
- (xv) The receipt by such Clearing Member from its independent auditors of an audit opinion that is not unqualified;

- (xvi) The cessation by such Clearing Member of its clearing of trades for a trading privilege holder of the Exchange; or
  - (xvii) Any significant default by a Customer of the Clearing Member.
- (b) Each Clearing Member shall promptly provide written notice to Nadex Clearing of:
- (i) Any reduction in adjusted net capital as reported on its Form 1-FR-FCM or net capital as reported on its FOCUS Report from the most recent filing of such report;
  - (ii) If Margin calls in one or more Customer accounts exceed the Clearing Member's excess net capital and one or more of such Margin calls remains unsatisfied at the close of business on the Business Day following the issuance of the calls;
  - (iii) Any planned material reduction in equity capital (and, in all cases, any planned reduction in equity capital that would cause a reduction in excess adjusted net capital, excess net capital or excess liquid capital of 30% or more), including the incurrence of a contingent liability which would materially affect the Clearing Member's capital or other representations contained in the latest financial statement submitted to Nadex Clearing should such liability become fixed; provided that no such notice shall be required in the case of a reduction in capital resulting from (1) the repayment or prepayment of subordinated liabilities for which notice has been given pursuant to applicable CFTC or SEC requirements, or (2) any futures or securities transaction in the ordinary course of business between a Clearing Member and any affiliate where the Clearing Member makes payment to or on behalf of such affiliate for such transaction and then receives payment from such affiliate for such transaction within two Business Days from the date of the transaction;
  - (iv) Any change in the Clearing Member's fiscal year or its public accountants;
  - (v) If any Person directly or indirectly becomes a 5% Owner;
  - (vi) Any changes in its name, business address, its telephone or facsimile number, electronic mail address, or any number or access code for any electronic communication device used by it to communicate with Nadex Clearing;
  - (vii) Any transfer, offer to transfer, or termination by it of any membership or trading privileges in the Exchange;
  - (viii) Any external audit findings (including reviews by the Clearing Member's designated Self-Regulatory Organization); or

- (ix) Any plans by the Clearing Member to begin clearing new markets.
- (c) A Clearing Member shall, unless it is impractical to do so (in which case it shall provide written notice to Nadex Clearing as promptly as possible), provide at least thirty days prior written notice to Nadex Clearing of:
  - (i) Any proposed change in the organizational or ownership structure or management of the Clearing Member, including any merger, combination or consolidation between the Clearing Member and another Person;
  - (ii) The assumption or guaranty by the Clearing Member of all or substantially all of the liabilities of another Person in connection with a direct or indirect acquisition of all or substantially all of that Person's assets;
  - (iii) The sale of all or a significant portion of the Clearing Member's business or assets to another Person;
  - (iv) A change in the direct or indirect beneficial ownership of 20% or more of the Clearing Member;
  - (v) Any change in the Clearing Member's systems provider or facilities manager used by the Clearing Member to process transactions in Contracts; or
  - (vi) Any planned changes to the Clearing Member's risk management processes or systems.
- (d) Upon the receipt of a notice of the type set forth in paragraphs (a) – (c) above, Nadex Clearing shall review the continuing eligibility of the Clearing Member for clearing membership. Where such notice constitutes notice of a Default, Nadex Clearing may take any or all of the actions as permitted by these Rules, including Rules 503, 504 and 601.

**309. Omnibus and Carrying Broker Accounts.**

- (a) Each Clearing Member shall maintain a complete list of all omnibus and carrying broker accounts maintained on its books. Such list shall be promptly provided to Nadex Clearing upon request. Information for each such account must include account name, number and address, and classification of the account as either Customer or house.
- (b) Each Clearing Member carrying an omnibus account shall at all times reflect in its records the gross long and short positions held in such omnibus account.
- (c) Each Clearing Member that maintains an omnibus account with another Clearing Member shall also bear financial responsibility to Nadex Clearing for that omnibus account.

### **310. Financial Requirements.**

- (a) Clearing Members must at all times maintain minimum regulatory capital in excess of the greater of (i) \$5,000,000, and (ii) the capital requirements imposed by any Government Agency, Self-Regulatory Organization or other examining authority or regulator to which it is subject by statute, regulation or agreement. Nadex Clearing may prescribe additional capital requirements with respect to any Clearing Member.
- (b) Clearing Members shall:
  - (i) Submit a monthly Form 1-FR-FCM or a FOCUS Report and supplementary information schedule, in the form prescribed by the CFTC, including an unaudited monthly Form 1-FR-FCM or FOCUS Report as of the Clearing Member's fiscal year-end, within the time set forth in CFTC Regulation 1.10. A Clearing Member must include with its Form 1-FR-FCM or FOCUS Report a Statement of Income (Loss) for the period between the date of the most recent 1-FR-FCM or FOCUS or, at the option of the Clearing Member, the most recent certified 1-FR-FCM or FOCUS filed with Nadex Clearing and the date for which the report is made.
  - (ii) Submit a certified Form 1-FR-FCM or FOCUS Report as of the Clearing Member's fiscal year-end within the time requirements set forth in CFTC Regulation 1.10. A Clearing Member must include with its certified Form 1-FR-FCM or FOCUS Report, a reconciliation from the certified Form 1-FR-FCM or FOCUS Report to the monthly Form 1-FR-FCM or FOCUS Report as of the same date or a statement that no material differences were noted.
- (c) Nadex Clearing may prescribe additional accounting, reporting, and other financial and/or operational requirements and Clearing Members must comply with such requirements.
- (d) Financial statement filing requirements under this Rule must be met through Nadex Clearing-approved electronic transmission, except for certified Form 1-FR-FCMs or FOCUS Reports, which shall be submitted in physical form. Clearing Members that are not futures commission merchants must provide the reports required by paragraph (b) to the CFTC upon request.
- (e) Exceptions to the financial and reporting requirements of this Rule 310 may be granted by the Board for good cause if it is determined that such exceptions will not jeopardize the financial integrity of Nadex Clearing.

### **311. Customer Accounts.**

- (a) All Customer funds deposited by a Clearing Member with Nadex Clearing on behalf of Customers protected by CFTC Regulation 1.20 shall be held in

accordance with the CEA and CFTC Regulation 1.20 in an account identified as “Customer Segregated.” Such Customer funds shall be segregated by Nadex Clearing and treated as belonging to the Customers of the Clearing Member. Pursuant to this Rule, a Clearing Member shall satisfy the segregation acknowledgment letter requirements of the CEA and CFTC Regulation 1.20 for Customer deposits held at Nadex Clearing.

- (b) Nadex Clearing will, upon request by a Customer, promptly transfer, from the Customer Account of one Clearing Member (the “**Transferor Clearing Member**”) to the Customer Account of another Clearing Member (the “**Transferee Clearing Member**”), all or a portion of such Customer’s Contracts if:
  - (i) The Customer delivers to the Transferor Clearing Member a request, in form and substance satisfactory to Nadex Clearing, to effect the transfer of all or a specified portion of such Customer’s Contracts and the Margin associated therewith to the Transferee Clearing Member (“**Customer Request**”);
  - (ii) The Transferor Clearing Member does not, within two Business Days following its receipt of the Customer Request, provide written notice to Nadex Clearing to the effect that the Customer’s account on the books of the Transferor Clearing Member is not, or after giving effect to the Customer Request would not be, in compliance with applicable margin, performance bond or other collateral requirements;
  - (iii) The Transferee Clearing Member provides written confirmation to Nadex Clearing that it consents to the transfers contemplated by the Customer Request and that giving effect thereto will not, to the knowledge of the Transferee Clearing Member, result in such Customer being undermargined on the books of the Transferee Clearing Member; and
  - (iv) Neither the Transferee Clearing Member nor the Transferor Clearing Member is in Default or has been suspended pursuant to Rule 601.

Without prejudice to its right to provide notice pursuant to paragraph (ii), the Transferor Clearing Member shall transmit the Customer Request to Nadex Clearing promptly upon receipt thereof by the Transferor Clearing Member. If the Customer Request relates to all of the Customer’s Contracts on the books of the Transferee Clearing Member, Nadex Clearing will transfer any Margin associated therewith to the Transferee Clearing Member. If the Customer Request relates to fewer than all of the Contracts carried on the books of the Transferor Clearing Member for such Customer, Nadex Clearing will determine the Margin required for those Contracts that will remain in the Customer Account of the Transferor Clearing Member (the “**Residual Margin Requirement**”) and transfer to the Transferee Clearing Member any Margin held by Nadex Clearing for all such Contracts, less the Residual Margin Requirement.

### **312. General Recordkeeping and Reporting Requirements.**

- (a) Each Clearing Member shall prepare, maintain and keep current those books and records required by these Rules, the CEA and the CFTC Regulations. Such books and records shall be open to inspection and promptly provided to Nadex Clearing upon request.
- (b) Each Clearing Member shall maintain an adequate accounting system, internal accounting controls, and procedures for safeguarding Customer and firm assets as set forth in CFTC Regulation 1.16(d)(2). This includes, but is not limited to, the following:
  - (i) Preparation and maintenance of complete and accurate reconciliations for all accounts; and
  - (ii) Resolution of reconciling items in a timely manner.
- (c) A Clearing Member shall file any information requested by Nadex Clearing within the time period specified in the request.
- (d) Each Clearing Member shall at all times have the ability to provide to Nadex Clearing in an acceptable form a complete set of equity system reports (including, at a minimum, the equity run, open position listing, day trade listing, cash adjustments listing and performance bond call and debit equity listing). Such reports shall be available to Nadex Clearing no later than 8:00 a.m. Chicago time on the Business Day following the report date.
- (e) Each Clearing Member shall at all times have the ability to provide promptly to Nadex Clearing upon request a listing of each of its Customers' method of access to the Exchange, including front end applications and network connections.

### **313. Disaster Recovery and Business Continuity.**

- (a) Each Clearing Member shall have written disaster recovery and business continuity policies and procedures reasonably designed to ensure it is able to perform certain basic operational functions in the event of a significant internal or external interruption to its operations. At a minimum, the following areas must be considered in the Clearing Member's policies and procedures:
  - (i) The Clearing Member must have procedures in place to allow it to continue to operate during periods of stress with minimal disruption to either Nadex Clearing or its Customers. The Clearing Members must perform periodic testing, including testing with Nadex Clearing when so requested, of disaster recovery and business continuity plans, duplication of critical systems at back up sites and periodic back-up of critical information; and

- (ii) The Clearing Member must maintain and, at the request of Nadex Clearing, provide accurate and complete information for its key personnel. A Clearing Member must inform Nadex Clearing in a timely manner whenever a change to its key personnel is made.
- (b) Nadex Clearing may prescribe additional and/or alternative requirements for Clearing Members' compliance with this Rule.

**314. Fees.**

Nadex Clearing shall have the right to instruct an Approved Financial Institution to debit the proprietary Original Margin account maintained by a Clearing Member, and/or any other account designated by such Clearing Member for purposes of this Rule, for any payment of fees, charges or other amounts (other than fines or penalties) due to Nadex Clearing or due to the Exchange (if and to the extent Nadex Clearing is acting as a collection agent for the Exchange).

**315. Segregation of Customer Funds and Assets.**

Each Clearing Member must comply with the requirements of the Act and CFTC Regulations regarding segregation of customer funds from the Clearing Member's own funds or assets, including, but not limited to, CFTC Regulations 1.20 through 1.30, 1.32, and 30.7.

Nadex Clearing shall comply with the applicable segregation requirements of Section 4d of the Act and CFTC Regulations with respect to customer funds held by Nadex Clearing.

As used in this Rule 315, "customer funds" has the same meaning as in CFTC Regulation 1.3.

**316. Access to the Clearing House.**

A Customer entering orders by electronic access must access Nadex Clearing through the systems owned or sponsored by such Customer's Clearing Member and with such risk controls applied by the Clearing Member as set forth in Rule 304. No Clearing Member may give a Customer direct electronic access to Clearing House systems without Nadex Clearing's prior written consent.



## **4. CLEARING AND SETTLEMENT OF CONTRACTS**

### **401. Submission of Trades.**

- (a) On each Business Day, at such time or times determined by Nadex Clearing, the Exchange shall electronically submit to Nadex Clearing trade confirmation reports generated by the electronic trading system of the Exchange. The reports shall show for each trade made that day (i) the identity of each Clearing Member, (ii) whether bought or sold, (iii) quantity, (iv) delivery month, (v) the price, (vi) whether for house, Customer, or non-Customer account, and (vii) such other information as may be required by Nadex Clearing to effect the matching of trades between the buyer and the seller.
- (b) If Nadex Clearing determines that any trade confirmation submitted pursuant to this Rule 401 contains a material error or is otherwise not eligible for clearing by Nadex Clearing, Nadex Clearing may reject such trade and notify the Exchange of such rejection, setting forth the basis of such objection.

### **402. Clearance and Substitution.**

- (a) The submission of a Contract to Nadex Clearing by or on behalf of the buying and selling Clearing Members shall constitute a request, by such Clearing Members, for the clearing of such Contract by Nadex Clearing. Upon the acceptance thereof by Nadex Clearing, which ordinarily shall be deemed to occur upon the receipt of matched trade data from the Exchange, the Contract shall be novated and Nadex Clearing shall be substituted as, and assume the position of, seller to the Clearing Member buying such Contract and buyer from the Clearing Member selling such Contract. Upon such substitution, such buying and selling Clearing Members shall be released from their obligations to each other, and Nadex Clearing shall be deemed to have succeeded to all the rights, and to have assumed all the Obligations, of the Clearing Members that were party to such Contract, in each case as provided in the Rules.
- (b) Where a Clearing Member acts to clear a Contract made for the account of a Customer, the Clearing Member becomes liable to Nadex Clearing and Nadex Clearing liable to the Clearing Member in respect of such Contract in the same manner and to the same extent as if the Contract were for the account of the Clearing Member.
- (c) Notwithstanding the provisions of paragraph (a), Nadex Clearing shall be substituted at the time payment, by or for both Clearing Members, of the Original Margin and Variation Margin due for transfers of Contracts made pursuant to Rule 409.

### **403. Original Margin.**

- (a) Nadex Clearing shall, from time to time, calculate the amount of Original Margin which shall be deposited by Clearing Members to protect Nadex Clearing on

Contracts accepted for clearing. Original Margin requirements for each of hedge positions and non-hedge positions shall ordinarily be uniform, but where particular risks are deemed hazardous, Nadex Clearing may call for additional Original Margin from a particular Clearing Member. Original Margin for non-hedge positions in Contracts will be greater than the Original Margin required for hedge positions. A Clearing Member may not offset positions of different Customers against one another.

- (b) One or more times on each Business Day, Nadex Clearing shall make available to each Clearing Member the amount of its Original Margin Obligations for all open Contracts. If a Clearing Member is obligated to make a payment of Original Margin, the Clearing Member shall, at the time and in the manner prescribed by Nadex Clearing, pay such amount to Nadex Clearing in the manner prescribed by Nadex Clearing. Original Margin may be in the form of cash and securities of such types and in such amounts as may be determined by Nadex Clearing. Clearing Members shall transfer Original Margin to an Approved Financial Institution for deposit in an account designated by Nadex Clearing. Nadex Clearing shall retain control over such Original Margin, which shall be and shall remain unencumbered by the lien or security interest of any party other than Nadex Clearing.
- (c) Original Margin deposits may be withdrawn by a Clearing Member with authorization from Nadex Clearing upon the performance or closing out of Contracts thus secured. In the event it shall become necessary to apply all or part of a Clearing Member's Original Margin pursuant to Rule 503 to meet such Clearing Member's Obligations to Nadex Clearing, such Clearing Member shall immediately restore any such deficiency in Original Margin.
- (d) If a Clearing Member is in Default, Nadex Clearing may foreclose on and sell any of the Margin deposited by such Clearing Member without notice. In such an event, Margin that has been deposited for the Clearing Member's Customer Account and any proceeds thereof shall be applied against the Margin requirements for the Customer Account, and Margin deposited for the Clearing Member's proprietary accounts and any proceeds thereof shall be applied first to any Margin deficiency in the Customer Account and, thereafter, against the requirements for the Clearing Member's proprietary accounts.
- (e) A Clearing Member shall not permit a Customer to withdraw funds from its account with such Clearing Member unless the net liquidating value, together with any securities in such Customer's account will, after such withdrawal, be sufficient to satisfy the Customer's Initial Margin requirements with respect to all Contracts held in such Customer's account.

#### **404. Variation Margin.**

- (a) Where Contracts are accepted for clearance in accordance with Rule 401 and the price of such Contracts is less than the Settlement Price therefor, the selling

Clearing Member shall be obligated to pay Variation Margin to, and the buying Clearing Member shall be entitled to receive Variation Margin from, Nadex Clearing as set forth below and in the policies and procedures of Nadex Clearing. Where Contracts are accepted for clearance in accordance with Rule 401 and the price of such Contracts is greater than the Settlement Price, the buying Clearing Member shall be obligated to pay Variation Margin to, and the selling Clearing Member shall be entitled to receive Variation Margin from, Nadex Clearing in accordance with the process set forth below and any other policies and procedures of Nadex Clearing. Thereafter, Clearing Member shall be obligated to pay or entitled to receive Variation Margin on all open Contracts and on all Contracts that have been closed on the books of Nadex Clearing. All Variation Margin payments to Nadex Clearing shall be made in cash.

- (b) If a Clearing Member is obligated to make a payment of Variation Margin to Nadex Clearing pursuant to Rule 404(a), the Clearing Member shall, at the time and in the manner prescribed by Nadex Clearing, pay such amount to Nadex Clearing in a manner prescribed by Nadex Clearing. Payment will be considered to be made only if and when it results in a credit to the account of Nadex Clearing. If a Clearing Member is entitled to a payment of Variation Margin from Nadex Clearing pursuant to Rule 404(a), Nadex Clearing shall promptly pay, at the time and in the manner prescribed by Nadex Clearing, the amount of such net balance to the Clearing Member.

#### **405. Offset and Settlement.**

- (a) Where, as the result of novation under Rule 401, a Clearing Member has bought and sold a Contract on or subject to the Rules of the Exchange with the same expiration, the purchase and sale will be offset by Nadex Clearing through the timely submission of instructions by the Clearing Member containing such information as Nadex Clearing may require in accordance with its procedures. A Clearing Member shall be required to pay the loss or entitled to collect the profit, as the case may be, upon such offsetting transactions, and shall have no further rights or be under any further obligation with respect thereto. For purposes of this Rule 405, the first Contracts made shall be deemed the first Contracts offset.
- (b) Contracts made and designated by the Clearing Member as for the Clearing Member's Customer Account shall not be offset under this Rule 405 against Contracts designated by the Clearing Member as for the Clearing Member's own account.

#### **406. Approved Financial Institutions.**

- (a) A bank, trust company or other institution may be designated by Nadex Clearing as an Approved Financial Institution for the purpose of acting as a depository for Margin on behalf of Clearing Members or acting in such other capacity as Nadex Clearing may approve. To become designated as an Approved Financial Institution, a bank, trust company or other institution must enter into an agreement

in such form and containing such information as Nadex Clearing from time to time may deem satisfactory and must meet such financial and other requirements as Nadex Clearing may establish from time to time. A bank, trust company or other institution which has been designated by Nadex Clearing as an Approved Financial Institution for any purpose may act as such until such designation is suspended or terminated.

- (b) All wire transfers by Clearing Members payable to Nadex Clearing must be drawn on or made by an Approved Financial Institution.

**407. Statement of Trades, Contracts, Pay and Collect.**

Nadex Clearing shall in the manner and at the time that it determines from time to time make available to a Clearing Member a statement of trades and Contracts for each Business Day on which such Clearing Member has trades to be cleared or Contracts open with Nadex Clearing. Any amounts the Clearing Member shall pay to or receive from Nadex Clearing under Rule 403 shall be indicated on this statement. Clearing Members shall make all Original and Variation Margin payments to Nadex Clearing by such time deadlines as may be established from time to time by Nadex Clearing. Transfer of all funds to and from Nadex Clearing shall be deemed final and irrevocable when made, absent manifest error.

**408. Confirmation to Customers.**

A Clearing Member shall confirm to the Customer every transaction made for the Customer no later than the following Business Day. Such confirmation shall be in electronic or written form and shall show the Contract bought or sold, the quantity, the price, and delivery month.

**409. Transfer Trades.**

- (a) Trades and positions may be transferred on the books of a Clearing Member or from one Clearing Member to another Clearing Member provided that:
  - (i) the transfer constitutes a change from one account to another account where the underlying beneficial ownership in such accounts remains the same;
  - (ii) an error has occurred in the clearing of a trade and a transfer to correct such error is undertaken and is completed within two Business Days after the trade date;
  - (iii) the transfer is in connection with, or as a result of, a merger, asset purchase, consolidation or similar non-recurring transaction between two or more entities where one or more entities become the successor in interest to one or more other entities; or

- (iv) if, in the judgment of Nadex Clearing, the situation so requires and such transfer is in the best interest of Nadex Clearing.
- (b) Unless otherwise permitted by Nadex Clearing, a transfer that is permitted pursuant to this Rule 409 (a “**Transfer Trade**”) shall be recorded and carried on the books of the receiving Clearing Member at the original trade dates and prices.

**410. Records.**

Clearing Members shall make and retain records with respect to each trade showing the Contract, quantity, date, price, delivery month, the name or account identifier of any Customer for whom the trade was made and such other information as may be required by law, regulation, or by Nadex Clearing. Such records shall be retained for at least five years, either in original form or in such other form as Nadex Clearing may from time to time authorize. Nadex Clearing may at its sole discretion inspect or take temporary possession of such records at any time upon demand.

**411. Settlement Prices.**

As used in the Rules, the term “**Settlement Price**” means the settlement price for a Contract for which positions remain open, as determined, intra-day and at the close of trading on each Business Day, by the Exchange in accordance with its rules, except in the case of manifest error or where Nadex Clearing believes that such settlement price does not reasonably reflect the value or price of the Contract, in which case Nadex Clearing, using its best efforts to consult with the Exchange, shall determine the official Settlement Price; provided, that Nadex Clearing shall in such circumstances promptly notify the Exchange and Clearing Members, and the reasons for that determination and the basis for the Settlement Price determined by Nadex Clearing shall be published in a notice to the Exchange and Clearing Members.

**412. Cash Settlement.**

After trading ceases on the last day of trading for a Contract that is cash-settled, any open positions in Contracts will be settled in cash at the Settlement Price established therefor.

**413. Reporting.**

Clearing Members shall make such reports in respect of trades, Contracts, settlements and deliveries as may be as prescribed by Nadex Clearing.

## **5. OBLIGATIONS OF NADEX CLEARING**

### **501. Limitation of Liability.**

- (a) The liability of Nadex Clearing relating to or arising out of Contracts shall be limited to losses resulting from the novation of the Contracts in accordance with the Rules. Subject to the foregoing, Nadex Clearing shall not be responsible for any action taken, or any delay or failure to take any action, hereunder or otherwise to fulfill Nadex Clearing's obligations to Clearing Members, other than for losses caused directly by Nadex Clearing's gross negligence or willful misconduct and shall not be liable for any other obligations, including but not limited to obligations of a non-Clearing Member, obligations of a Clearing Member to a Customer or other non-Clearing Member or obligations of a Clearing Member to another Clearing Member that is acting for it as broker; nor shall Nadex Clearing become liable to make deliveries to or accept deliveries from Clearing Members or Customers. Under no circumstances will Nadex Clearing be liable for the acts, delays, omissions, bankruptcy, or insolvency, of any third party, including, without limitation, any depository, custodian, subcustodian, clearing or settlement system unless Nadex Clearing was grossly negligent or engaged in willful misconduct. Under no circumstances will Nadex Clearing be liable for any indirect, consequential, incidental, special, punitive or exemplary loss or damage (including, but not limited to, loss of business, loss of profits, trading losses, loss of opportunity and loss of use) howsoever suffered or incurred, regardless of whether Nadex Clearing has been advised of the possibility of such damages or whether such damages otherwise could have been foreseen or prevented.
- (b) Except as otherwise expressly provided by written agreement between Nadex Clearing and any other Person:
  - (i) Nadex Clearing shall not be liable for any obligations of such other Person nor shall any funds or any other assets of Nadex Clearing be available to such other Person (or any Person claiming through such other Person) for any purpose, and no Clearing Member shall assert against Nadex Clearing any claim based upon any obligations of any other Person to such Clearing Member; and
  - (ii) Such other Person shall not be liable for any obligations of Nadex Clearing nor shall any funds or any other assets of such other Person be available to Nadex Clearing (or any Person claiming through Nadex Clearing) for any purpose, and no Clearing Member shall assert against such other Person any claim based upon any obligations of Nadex Clearing to such Clearing Member.
- (c) Nadex Clearing may accept and rely upon any information or instruction given to Nadex Clearing by a Clearing Member or its Authorized Representative, which reasonably is understood by Nadex Clearing to have been delivered to Nadex Clearing by the Clearing Member and such Clearing Member shall indemnify

Nadex Clearing, and any of its employees, Officers, directors, members, agents and Clearing Members against any loss, liability or expense as a result of any act done in reliance upon the authenticity of any information or instruction received by Nadex Clearing, the inaccuracy of the information contained therein or effecting transactions in reliance upon such information or instruction.

- (d) A Clearing Member shall reimburse Nadex Clearing for all fees, expenses, charges and costs assessed by a depository against Nadex Clearing with respect to Margin maintained in such Clearing Member's account, and Nadex Clearing shall not have any obligation or responsibility to preserve, protect, collect or realize upon, and under no circumstances shall Nadex Clearing be liable for, any loss or diminution in value or depreciation in Margin deposited by Clearing Members. Clearing Members that deposit Margin with an Approved Financial Institution pursuant to the Rules shall hold Nadex Clearing harmless from all liability, losses and damages which may result from or arise with respect to the care and sale of such Margin.
- (e) Any obligation of Nadex Clearing to a Clearing Member arising from a Contract or from any provision of the Rules shall be subject to all the terms of the Rules, including the setoff and other rights set forth herein. The rights of Nadex Clearing set forth herein shall be in addition to other rights that Nadex Clearing may have under Applicable Law and governmental regulations, other provisions of the Rules, additional agreements with the Clearing Member or any other source.

## **502. Clearing Lien.**

As security for its obligations to Nadex Clearing, each Clearing Member grants to Nadex Clearing a first lien and security interest on all Original Margin, Variation Margin, Guaranty Fund deposits, Contracts, positions and other funds or property held by or on behalf of Nadex Clearing in or for the accounts of such Clearing Member, and any equity interest held by such Clearing Member in Nadex Clearing. Nadex Clearing may assign, pledge, repledge or otherwise create a lien on or security interest in, and enter into repurchase agreements involving, Margin, Guaranty Fund deposits, Contracts and other property held in or for the accounts of a Clearing Member to secure the repayment of funds that may be borrowed by Nadex Clearing.

## **503. Clearing Member Default; Application of Nadex Clearing Resources.**

- (a) If a Clearing Member is in Default, Margin held with respect to such Clearing Member's proprietary accounts, such Clearing Member's Guaranty Fund deposit and any other of such Clearing Member's assets held by, pledged to or otherwise available to Nadex Clearing, including any guarantee issued pursuant to Rule 303, shall be applied by Nadex Clearing to discharge the Obligations of such Clearing Member to Nadex Clearing (including any costs and expenses associated with the liquidation, transfer or management of Contracts held in or for the accounts of such Clearing Member, and any fees, assessments or fines imposed by Nadex

Clearing on such Clearing Member), and Nadex Clearing may cause all Contracts of such Clearing Member (whether or not carried in a Customer Account) to be closed or offset, transferred to any other Clearing Member, or otherwise resolved as provided in Rule 601.

- (b) If the Margin held with respect to such Clearing Member's proprietary accounts, such Clearing Member's Guaranty Fund deposit and other of such Clearing Member's assets held by, pledged to or otherwise available to Nadex Clearing, including any guarantee issued pursuant to Rule 303, are insufficient to satisfy the defaulting Clearing Member's Obligations to Nadex Clearing after giving effect to the application of such amounts pursuant to paragraph (a), such defaulting Clearing Member shall continue to be liable therefor. In such event, the amount of the deficiency, exclusive of any fees, assessments and fines that may have been imposed by Nadex Clearing (the "**Clearing Member Deficiency**") shall, until collected, be met from the following sources of funds, with each such source being completely exhausted, to the extent practicable, before the next following source is applied:
  - (i) The Guaranty Fund deposits of all Clearing Members (other than a Clearing Member that is in Default) and the Nadex Clearing Contribution, *pari passu* and in direct proportion to the total Guaranty Fund deposits of Nadex Clearing and of each Clearing Member (other than a Clearing Member that is in Default); and
  - (ii) Assessments levied by Nadex Clearing upon all Clearing Members (other than a Clearing Member that is in Default) as provided in Rule 504(b).
- (c) In closing, offsetting, transferring or otherwise resolving the Contracts of a Clearing Member as provided herein and in Rule 601, Nadex Clearing shall have the right:
  - (i) With respect to Contracts in a Customer Account of such Clearing Member, to set off (x) any proceeds received by Nadex Clearing from the disposition of such Contracts and any property or proceeds thereof deposited with or held by Nadex Clearing as Margin for such account against (y) any amounts paid by Nadex Clearing in the disposition of such Contracts, including any commissions or other losses or expenses incurred in connection therewith or in connection with the liquidation of Margin deposits in such Customer Account and any other amounts owed to Nadex Clearing as a result of transactions in the Customer Account or otherwise lawfully chargeable against such Customer Account;
  - (ii) With respect to the Contracts in any other account of such Clearing Member, to set off (x) any proceeds received by Nadex Clearing from the disposition of such Contracts, any property or proceeds thereof deposited with or held by Nadex Clearing as Margin for such accounts and any other property of the Clearing Member within the possession or control



of Nadex Clearing other than property that has been identified by such Clearing Member as required to be segregated pursuant to the CEA and CFTC Regulations, against (y) any amounts paid by Nadex Clearing in the disposition of such Contracts, including any commissions or other losses or expenses incurred in connection therewith or in connection with the liquidation of Margin deposits in such accounts, and any other Obligations of the Clearing Member to Nadex Clearing, including Obligations of the Clearing Member to Nadex Clearing remaining after the setoffs referred to in paragraph (i) above, and any Obligations arising from any other accounts maintained by the Clearing Member with Nadex Clearing; and

- (iii) To defer closing or otherwise settling such trades and Contracts if, in its discretion, it determines that the closing out of some or all of the suspended Clearing Member's trades or Contracts would not be in the best interests of Nadex Clearing or other Clearing Members, taking into account the size and nature of the positions in question, market conditions prevailing at the time, the potential market effects of such liquidating transactions as might be directed by Nadex Clearing, and such other circumstances as it deems relevant.
- (d) For purposes of this Rule, each Default by a Clearing Member will be considered a separate Default.
- (e) A Clearing Member shall take no action, including but not limited to attempting to obtain a court order, that would interfere with the ability of Nadex Clearing to exercise its rights under the Rules and its agreements with such Clearing Member.

#### **504. Guaranty Fund.**

- (a) Each Clearing Member shall deposit and maintain a contribution to the Guaranty Fund in such form and in such amount as determined by Nadex Clearing from time to time. Nadex Clearing shall determine the appropriate size of the Guaranty Fund. If at any time the Clearing Member does not have a sufficient deposit in the Guaranty Fund, any such deficiency shall remain a liability of the Clearing Member to Nadex Clearing, which it may collect from any other assets of such Clearing Member or by legal process. Any permitted Eligible Securities shall be valued in accordance with such methodology or subject to such haircuts as may be adopted by the Board from time to time. Deposits of Eligible Securities shall be made by such means and subject to such agreements and undertakings as may be prescribed by Nadex Clearing.
  - (i) Calculation

The amount required to be deposited by each Clearing Member shall be determined by a formula that reflects certain components of risk and volume and shall be calculated by Nadex Clearing. A Clearing Member

whose requirement has increased relative to its current contribution shall be required to deposit cash, Eligible Securities or other property acceptable to Nadex Clearing to remedy such deficiency, subject to such thresholds as may be established by Nadex Clearing from time to time. A Clearing Member whose Guaranty Fund requirement has decreased relative to its current contribution may withdraw its excess contribution upon request and at intervals established by Nadex Clearing from time to time.

(ii) Custody

- (1) The Guaranty Fund shall be deposited in a special account in the name of Nadex Clearing with such depositories or other acceptable locations as may be designated by Nadex Clearing.
- (2) Nadex Clearing shall be empowered to invest and reinvest all or part of the funds constituting the Guaranty Fund. Such investments shall be for the account and risk of Nadex Clearing, and any income and gains on such investments and interest on such deposits shall belong to Nadex Clearing and may be withdrawn from the Guaranty Fund and deposited with the general funds of Nadex Clearing. No interest shall be paid to any Clearing Member on funds deposited in the Guaranty Fund.

(iii) Impairment

If the Guaranty Fund or any part thereof shall be lost or become unavailable from any cause other than the Default of the depositing Clearing Member, the amount so lost or made unavailable shall be forthwith restored by transferring thereto such of the surplus funds of Nadex Clearing as may be necessary, except such amount as Nadex Clearing may, in its discretion, decide to retain as surplus for future operating expenses, and if the amount thus transferred from surplus is insufficient to cover the entire loss, the balance of such loss shall be made up by an assessment upon each Clearing Member pursuant to paragraph (b). Such assessment shall be paid by a Clearing Member immediately after the issuance of notice to such Clearing Member.

(iv) Return of Clearing Member Guaranty Fund Deposit

After a Clearing Member ceases to be a Clearing Member of Nadex Clearing and after all Obligations of such Clearing Member to Nadex Clearing shall have been discharged in full, the amount of the Guaranty Fund to which such Clearing Member is entitled shall be returned. Expenses incurred by Nadex Clearing in connection with a Clearing Member's deposit or the return thereof may be charged to the Clearing Member.

(v) Certain Borrowings

- (1) Nadex Clearing may at any time and from time to time assign, pledge, repledge or otherwise create a lien on or security interest in the Guaranty Fund and/or the cash, securities and other property held in the Guaranty Fund to secure the repayment of funds borrowed by Nadex Clearing and any interest, fees and other amounts payable in connection therewith.
- (2) Any funds so borrowed shall be used and applied by Nadex Clearing solely for the purposes for which cash, securities and other property held in the Guaranty Fund are authorized to be used pursuant to the Rules; provided that the failure of Nadex Clearing to use such funds in accordance with this Rule shall not impair any of the rights or remedies of any assignee, pledgee or holder of any such lien or security interest.
- (3) Any such borrowing shall be on terms and conditions deemed necessary or advisable by Nadex Clearing, and may be in amounts greater, and extend for periods of time longer than the Obligations, if any, of any Clearing Member to Nadex Clearing for which such cash, securities or other property was pledged to or deposited with Nadex Clearing.
- (4) Cash, Eligible Securities and other property held in the Guaranty Fund shall remain the property of the Clearing Member depositing such cash, Eligible Securities and other property, except that:
  - (A) Such property shall be subject to the rights and powers of Nadex Clearing with respect thereto as set forth in the Rules and the agreements between such Clearing Member and Nadex Clearing;
  - (B) Such property shall be subject to the rights and powers of any Person to which the Guaranty Fund or any of the cash, securities or other property held therein shall have been assigned, pledged, repledged or otherwise subjected to a lien or security interest; and
  - (C) A Clearing Member shall not have the right to any specific document of title or certificates or any other evidence of title to Eligible Securities deposited in the Guaranty Fund, but will instead be entitled, subject to Applicable Law, to securities of an identical type, nominal value, description and amount to particular Eligible Securities deposited by such Clearing Member.

(b) Clearing Member Assessment

- (i) The amount of any loss remaining after application of the funds set forth in Rule 503(b)(i) shall be assessed against all Clearing Members (excluding any Clearing Member that is in Default). Each Clearing Member (excluding any Clearing Member that is in Default) shall be subject to an assessment in an amount, as determined by Nadex Clearing, that is proportional to such Clearing Member's Guaranty Fund requirement compared to the total Guaranty Fund requirement of all Clearing Members (excluding any Clearing Member that is in Default).
- (ii) Notwithstanding the foregoing and except as provided for below, a Clearing Member will not be liable to make good more than an additional 100% of the amount of its Guaranty Fund requirement, as calculated by Nadex Clearing pursuant to paragraph (a) prior to the Default that gave rise to the assessment, if (1) within five Business Days following such assessment, the Clearing Member notifies Nadex Clearing in writing that it is terminating its status as a Clearing Member, (2) no Contracts are submitted for clearing through any of the Clearing Member's accounts after the giving of such notice other than for the purpose of liquidating open positions, and (3) the Clearing Member closes out or transfers all of its open positions with Nadex Clearing as promptly as practicable after the giving of such notice; provided, that a Clearing Member which so terminates its status as a Clearing Member shall be ineligible to be readmitted to Nadex Clearing unless the Clearing Member agrees to such reimbursement of the Persons who were Clearing Member at the time of such termination as Nadex Clearing deems fair and equitable in the circumstances. A Clearing Member that has satisfied the foregoing conditions shall not be subject to assessment under this paragraph (b) for a Default that occurs after the time such Clearing Member has notified Nadex Clearing that it is terminating its status as a Clearing Member.
- (iii) The difference, if any, between the amount that would be assessed against any Clearing Member pursuant to subparagraph (i) and subparagraph (ii) shall be considered a deficiency and shall be assessed against Clearing Members (other than a Clearing Member that is in Default and any Clearing Member that has paid the maximum amount set forth in subparagraph (ii)) in accordance with subparagraph (i) of this Rule until the entire deficiency is paid or every Clearing Member (other than a Clearing Member that is in Default or a Clearing Member that has paid the maximum amount set forth in subparagraph (ii)) has paid the amount set forth in subparagraph (ii).
- (iv) A Clearing Member shall pay the amount of any assessment made pursuant to this Rule in immediately available funds not later than the end-of-day variation settlement cycle on the day written notice of such assessment has been delivered to such Clearing Member. Any Clearing

Member that does not satisfy an assessment timely and in full shall be in Default. Any Nadex Clearing loss that remains as a result of such Default shall be assessed to the non-defaulting Clearing Members.

**505. Close-Out Netting.**

(a) Insolvency of Nadex Clearing

If at any time Nadex Clearing: (i) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding up or liquidation, and, in the case of any such proceeding or petition presented against it, such proceeding or petition results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for Nadex Clearing's winding-up or liquidation, or (ii) approves resolutions authorizing any proceeding or petition described in clause (i) above (collectively, a "**Bankruptcy Event**"), all open positions shall be closed promptly.

(b) Default of Nadex Clearing

If at any time Nadex Clearing fails to comply with an undisputed obligation to pay money or deliver property to a Clearing Member that is due and owing in connection with a transaction on Nadex Clearing or cleared by Nadex Clearing, for a period of thirty days from the date that Nadex Clearing receives notice from the Clearing Member of the past due obligation, the Clearing Member's open proprietary and Customer positions at Nadex Clearing shall, at the election of that Clearing Member, be closed promptly.

(c) Netting and Close-Out

At such time as a Clearing Member's positions are closed in accordance with paragraph (b) of this Rule, the obligations of Nadex Clearing to a Clearing Member in respect of all of its proprietary positions, accounts, collateral and deposits to the Guaranty Fund shall be netted, in accordance with the Bankruptcy Code, the CEA and the regulations adopted thereunder in each case, against the obligations of that Clearing Member in respect of both its proprietary and its Customers' positions, accounts, collateral and its obligations to the Guaranty Fund to Nadex Clearing. All obligations of Nadex Clearing to a Clearing Member in respect of its Customer positions, accounts, and collateral shall be separately netted against the positions, accounts and collateral of its Customers in accordance with the requirements of the Bankruptcy Code, the CEA and the regulations adopted thereunder in each case. At the time a Bankruptcy Event takes place, the authority of Nadex Clearing, pursuant to Rule 504(b), to make new assessments and/or require a Clearing Member to cure a deficiency in its Guaranty Fund deposit, arising after the Bankruptcy Event, shall terminate, and

all positions open immediately prior to the close-out shall be valued in accordance with the procedures of paragraph (d) of this Rule.

(d) Valuation

As promptly as reasonably practicable, but in any event within thirty days of: (x) the Bankruptcy Event, or (y) if a Clearing Member elects to have its open positions closed as described in paragraph (b) of this Rule, the date of the election, Nadex Clearing shall fix a U.S. dollar amount (the “**Close-out Amount**”) to be received from (or, in the case of a negative Close-out Amount, paid to) Nadex Clearing with respect to each position in each account of each Clearing Member. In fixing Close-out Amounts, Nadex Clearing shall exercise its discretion, acting in good faith and in a commercially reasonable manner, in adopting methods of valuation expected to produce reasonably accurate substitutes for the values that would have been obtained from the relevant market if it were operating normally, including but not limited to the use of pricing models to determine a value for a cleared Contract based on the market price of the underlying interest or the market prices of its components. In determining a Close-out Amount, Nadex Clearing may consider any information that it deems relevant, including, but not limited to, any of the following:

- (i) Prices for underlying interests in recent transactions, as reported by the market or markets for such interests;
- (ii) Quotations from leading dealers in the underlying interest, setting forth the price (which may be a dealing price or an indicative price) that the quoting dealer would charge or pay for a specified quantity of the underlying interest;
- (iii) Relevant historical and current market data for the relevant market, provided by reputable outside sources or generated internally; and
- (iv) Values derived from theoretical pricing models using available prices for the underlying interest or a related interest and other relevant data.

Amounts stated in a currency other than U.S. dollars shall be converted to U.S. dollars at the current rate of exchange, as determined by Nadex Clearing. If a Clearing Member has a negative Close-out Amount, it shall promptly pay that amount to Nadex Clearing.

(e) Interpretation in Relation to FDICIA

Nadex Clearing intends that certain provisions of this Rule be interpreted in relation to certain terms identified by quotation marks that are defined in the Federal Deposit Insurance Corporation Improvement Act of 1991 (“**FDICIA**”), as amended, as follows:

- (i) Nadex Clearing is a “clearing organization.”
- (ii) An obligation of a Clearing Member to make a payment to Nadex Clearing, or of Nadex Clearing to make a payment to a Clearing Member, subject to a netting agreement, is a “covered clearing obligation” and a “covered contractual payment obligation.”
- (iii) An entitlement of a Clearing Member to receive a payment from Nadex Clearing, or of Nadex Clearing to receive a payment from a Clearing Member, subject to a netting contract, is a “covered contractual payment entitlement.”
- (iv) Nadex Clearing is a “member,” and each Clearing Member is a “member.”
- (v) The amount by which the covered contractual payment entitlements of a Clearing Member or Nadex Clearing exceed the covered contractual payment obligations of such Clearing Member or Nadex Clearing after netting under a netting contract is its “net entitlement.”
- (vi) The amount by which the covered contractual payment obligations of a Clearing Member or Nadex Clearing exceed the covered contractual payment entitlements of such Clearing Member or Nadex Clearing after netting under a netting contract is its “net obligation.”
- (vii) The Rules of Nadex Clearing, including this Rule 505, are a “netting contract.”

#### **506. Investment of Customer Funds**

Funds and assets belonging to Clearing Members and their Customers that are invested by Nadex Clearing shall be held in instruments that comply with CFTC Regulation 1.25 as if all such funds and assets comprise Customer funds subject to segregation pursuant to Section 4d(a) of the CEA and CFTC Regulations.

## **6. SUSPENSION; DISCIPLINARY PROCEEDINGS**

### **601. Suspension.**

#### **(a) General**

The Board or the Risk Management and Audit Committee may summarily suspend any Clearing Member if (i) the Clearing Member is in Default, (ii) a Removal Event has occurred with respect to the Clearing Member, or (iii) the Clearing Member is in such financial or operating difficulty that the Board or the Risk Management and Audit Committee determines that suspension is necessary for the protection of Nadex Clearing, other Clearing Members, or the general public (whether or not such Clearing Member continues to meet the required minimum financial requirements pursuant to the Rules).

#### **(b) Notice of Suspension to Clearing Members**

Upon the suspension of a Clearing Member, Nadex Clearing shall as soon as possible notify all Clearing Members of the suspension. Such notice shall state to the extent practicable in general terms how pending transactions, open positions and other pending matters will be affected and what steps are to be taken in connection therewith.

#### **(c) Pending Transactions**

Notwithstanding any other provision of the Rules, Nadex Clearing shall have no obligation to accept any transaction of a suspended Clearing Member that was effected after the time at which the Clearing Member was suspended. In the event a transaction of a suspended Clearing Member is rejected by Nadex Clearing, Nadex Clearing shall provide notice of such rejection to the other party thereto and such transaction shall be closed by the other party thereto in accordance with the rules of the Exchange.

#### **(d) Open Positions**

Nadex Clearing shall have the right to cause open positions in Contracts in any of the accounts of a suspended Clearing Member:

- (i) To be closed in such manner as deemed practicable by Nadex Clearing, in its sole discretion;
- (ii) To be transferred to the account of one or more other Clearing Members;
- (iii) To be offset against each other and, to the extent of any remaining imbalance, against the Contracts of other Clearing Members; or
- (iv) To be settled at the Settlement Price for such Contracts, or at such other price or prices as Nadex Clearing may deem fair and reasonable under



the circumstances, in which event Nadex Clearing may cause Contracts in the accounts of other Clearing Members to be settled at such price or prices.

In connection with any action undertaken by Nadex Clearing pursuant to subparagraphs (i) through (iv) above, Nadex Clearing shall have the right to apply the Margin and Guaranty Fund deposit of the applicable Clearing Member and any other assets of such Clearing Member held by, pledged to or otherwise available to Nadex Clearing, including any guarantee issued pursuant to Rule 303, to discharge the Obligations of such Clearing Member to Nadex Clearing (including any costs and expenses associated with the liquidation, transfer or management of Contracts held in or for the accounts of such Clearing Member, and any fees, assessments or fines imposed by Nadex Clearing on such Clearing Member).

Nadex Clearing may delegate to specified Officers or agents of Nadex Clearing the authority to determine, within such guidelines, if any, as Nadex Clearing shall prescribe, the nature and timing of transactions of the type described in subparagraph (i). Notwithstanding the preceding provisions of this paragraph (d), if Nadex Clearing shall determine, taking into account the size and nature of a suspended Clearing Member's positions, market conditions prevailing at the time, the potential market effects of liquidating transactions that might be directed by Nadex Clearing, and such other circumstances as Nadex Clearing deems relevant, that the closing out of some or all of the suspended Clearing Member's positions would not be in the best interests of Nadex Clearing, other Clearing Members, or the general public, such positions need not be closed out.

(e) Protective Action

If Nadex Clearing (i) is unable, for any reason, to close out in a prompt and orderly manner any positions or to convert to cash any Margin deposits of a suspended Clearing Member, or (ii) elects pursuant to paragraph (d) of this Rule not to close out any such positions, Nadex Clearing may authorize the execution of hedging transactions from time to time for the account of Nadex Clearing, solely for the purpose of reducing the risk to Nadex Clearing resulting from the continued maintenance of such positions or the continued holding of such Margin deposits. Nadex Clearing may delegate to specified Officers or agents of Nadex Clearing the authority to determine, within such guidelines, if any, as Nadex Clearing shall prescribe, the nature and timing of such hedging transactions.

(f) Reimbursement of Costs and Expenses

Any costs or expenses, including losses, sustained by Nadex Clearing in connection with transactions effected for its account pursuant to this Rule shall be charged to the suspended Clearing Member, and any gains realized on such transactions shall be credited to such Clearing Member; provided, however, that costs, expenses, and gains allocable to the hedging of positions in a Customer

Account shall be charged or credited, as the case may be, to the Customer Account, and only the excess, if any, of such costs and expenses over the funds available in that account shall be charged to the Clearing Member. Reasonable allocations of costs, expenses, and gains among accounts made by Nadex Clearing for the purpose of implementing the proviso to the preceding sentence shall be binding on the Clearing Member and any persons claiming through the Clearing Member and their respective successors and assigns.

**602. Right of Appeal.**

A Clearing Member suspended pursuant to Rule 601 shall be entitled, upon request within five Business Days after the date of its suspension, to a written statement of the grounds for its suspension and shall have the right to appeal its suspension in accordance with the following procedure:

- (a) A suspended Clearing Member may appeal its suspension by filing a written notice of appeal within five Business Days after the date of its receipt of a written statement of the grounds for its suspension.
- (b) Appeals shall be considered and decided by the Appeal Panel. Appeals shall be heard as promptly as possible, and in no event more than five Business Days after the filing of the notice of appeal. The appellant shall be notified of the time, place and date of the hearing not less than three Business Days in advance of such date. At the hearing, the appellant shall be afforded an opportunity to be heard and to present evidence in its own behalf, and may, if it so desires, be represented by counsel. As promptly as possible after the hearing, the Appeal Panel shall, by the vote of a majority of its members, affirm or reverse the suspension or modify the terms thereof. The appellant shall be notified in writing of the Appeal Panel's decision; and if the decision shall have been to affirm or modify the suspension, the appellant shall be given a written statement of the grounds therefor.
- (c) Any decision by the Appeal Panel to affirm or modify a suspension shall be reviewable by the Board on its own motion or on written demand by the appellant filed with Nadex Clearing within three Business Days after receipt of notice of the Appeal Panel's decision. The Board may afford the appellant a further opportunity to be heard or to present evidence. The appellant shall be notified in writing of the decision of the Board; and if the decision shall have been to affirm or modify the suspension, the appellant shall be given a written statement of the grounds therefor.
- (d) The filing of an appeal pursuant to this Rule shall not impair the validity or stay the effect of the suspension appealed from. The reversal or modification of a suspension shall not invalidate any acts of Nadex Clearing taken pursuant to such suspension prior to such reversal or modification, and the rights of any person which may arise out of any such acts shall not be affected by such reversal or modification.

- (e) A record shall be kept of any hearing held pursuant hereto. The cost of the transcript may, in the discretion of the body holding the hearing, be charged in whole or in part to the suspended Clearing Member in the event that the suspension is finally affirmed.

**603. Sanctions from Disciplinary Proceedings.**

- (a) Nadex Clearing may censure, suspend, expel or limit the activities, functions or operations of, and/or impose a fine on, a Clearing Member for (i) a violation of the Rules or its agreements with Nadex Clearing, (ii) any neglect or refusal by such Clearing Member to comply with any applicable order or direction of Nadex Clearing, (iii) any error, delay or other conduct that materially and adversely affects the operations of Nadex Clearing, or (iv) a failure to provide adequate personnel or facilities for its transactions with Nadex Clearing.
- (b) Nadex Clearing shall provide prompt notice to the CFTC of any action taken in accordance with this Rule 603.

**604. Procedures for Disciplinary Proceedings.**

- (a) Before any sanction is imposed, Nadex Clearing shall furnish the person against whom the sanction is sought to be imposed (“**Respondent**”) with a concise written statement of the charges against the Respondent. The Respondent shall have ten Business Days after the service of such statement to file with Nadex Clearing a written answer thereto. The answer shall admit or deny each allegation contained in the statement of charges and may also contain any defense which the Respondent wishes to submit. Allegations contained in the statement of charges which are not denied in the answer shall be deemed to have been admitted, and any defense not raised in the answer shall be deemed to have been waived. If an answer is not filed within the time prescribed above or any extension thereof granted pursuant to paragraph (d) of this Rule, the allegations contained in the statement of charges shall be deemed to have been admitted, and the sanction specified in the final request shall be imposed without further proceedings and the Respondent shall be notified thereof in writing. If an answer is timely filed, Nadex Clearing shall (unless the Respondent and Nadex Clearing shall have stipulated to the imposition of an agreed sanction) schedule a hearing before the Disciplinary Panel. The Respondent shall be given not less than three Business Days advance notice of the place and time of such hearing. At the hearing, the Respondent shall be afforded the opportunity to be heard and to present evidence in its behalf and may be represented by counsel. A record of the hearing shall be prepared and the cost of the transcript may, in the discretion of the Disciplinary Panel, be charged in whole or in part to the Respondent in the event any sanction is imposed on the Respondent. As soon as practicable after the conclusion of the hearing, the Disciplinary Panel shall furnish the Respondent and the Board with a written statement of its decision. If the decision shall have been to impose a disciplinary sanction, the written statement shall set forth (i) any act or practice in which the Respondent has been found to have engaged, or which the Respondent

has been found to have omitted; (ii) the specific provisions of the Rules which any such act, practice or omission has been deemed to violate; and (iii) the sanction imposed and the reasons therefor.

- (b) In the event that (i) the Disciplinary Panel censures, fines, suspends, expels or limits the activities, functions or operations of a Respondent, or (ii) determines not to impose any disciplinary measures on a Respondent, the Respondent, in the case of (i) above, or the President, in the case of (ii) above, may apply for review to the Board, by written motion filed with Nadex Clearing within five Business Days after issuance of the Disciplinary Panel's written statement of its decision.
- (c) The granting of any such motion shall be within the discretion of the Board. In addition, the Board may determine to review any such action by the Disciplinary Panel on its own motion. Review by the Board shall be on the basis of the written record of the proceedings in which the sanction was imposed, but the Board may, in its discretion, afford the Respondent a further opportunity to be heard or to present evidence. A record shall be kept of any such further proceedings. Based upon such review, the Board may affirm, reverse or modify, in whole or in part, the decision of the Disciplinary Panel. The Respondent shall be notified in writing of the decision of the Board and if the decision shall have been to affirm or modify the imposition of any disciplinary sanction, the Respondent shall be given a written statement setting forth (i) any act or practice in which the Respondent has been found to have engaged, or which the Respondent has been found to have omitted; (ii) the Rules which any such act, practice or omission has been deemed to violate; and (iii) the sanction imposed and the reasons therefor.
- (d) Any time limit set forth in this Rule may be extended by the body having jurisdiction over the matter in respect of which the time limit is imposed.
- (e) Any action taken by the Disciplinary Panel hereunder shall be deemed to be final upon (i) expiration of the time provided for the filing of a motion for review, or any extension thereof granted pursuant to paragraph (d) hereof; or (ii) if a motion for review is timely filed, when the Respondent is notified of the denial of the motion or the decision of the Board on review, as the case may be; or (iii) if the Board shall determine on its own motion to review the action by the Disciplinary Panel, when the Respondent is notified of the decision of the Board on review.
- (f) The summary suspension of a Clearing Member pursuant to Rule 601 shall not be deemed to be a "sanction" within the meaning of this Rule, and the provisions of this Rule shall be inapplicable to any such summary suspension.

#### **605. Discipline by Other Self-Regulatory Organizations.**

Nothing in this Chapter 6 shall affect the right of any Self-Regulatory Organization to discipline its members pursuant to the provisions of its rules for a violation of the Rules of Nadex Clearing.

## **7. MISCELLANEOUS**

### **701. Force Majeure.**

Notwithstanding any other provision of these Rules, Nadex Clearing shall not be obligated to perform its obligations under these Rules or any agreement with a Clearing Member relating to Contracts, or to compensate any Person for losses occasioned by any delay or failure of performance, to the extent such delay or failure is the result of acts of God, lightning, earthquake, fire, epidemic, landslide, drought, storm, explosion, flood, nuclear radiation, act of a public enemy, terrorist activity, act of state or blockade, insurrection, riot or civil disturbance, strike or labor disturbance, power or communications failure or any other cause beyond Nadex Clearing's reasonable control (whether or not similar to any of the foregoing). If Nadex Clearing shall, as a result of any of the above-described events, fail to perform any of its obligations, such failure shall be excused for a period equal to the period of delay caused by such event. In such an event, Nadex Clearing shall give written notice thereof to the Exchange or such Clearing Member, as the case may be, as soon as it is reasonably practicable and attempt diligently to remove such condition.

### **702. Suspension of Rules.**

The time frames fixed by these Rules, interpretations or policies of Nadex Clearing for the doing of any act or acts may be extended, or the doing of any act or acts required by these Rules or any interpretations or policies of Nadex Clearing may be waived, and any provision of these Rules or any interpretations or policies of Nadex Clearing may be suspended by Nadex Clearing whenever, in the judgment of the Board, the President or his or her designee, such extension, waiver or suspension is necessary or in the best interest of Nadex Clearing. Any such extension or waiver may continue in effect after the event or events giving rise thereto but shall not continue in effect for more than thirty calendar days after the date thereof unless it shall be approved by the Board within such period of 30 calendar days. A written report of any such extension or waiver, stating the pertinent facts and the reason such extension or waiver was deemed necessary or in the best interest of Nadex Clearing shall be presented to the Board at its next regular meeting.

### **703. Confidentiality.**

All information received by Nadex Clearing concerning positions carried by Nadex Clearing or any other clearing organization for a Clearing Member, margin payments between Nadex Clearing or any other clearing organization and a Clearing Member, or deliveries made by or to a Clearing Member, and any other information provided by a Clearing Member to Nadex Clearing, including, without limitation, financial statements filed with Nadex Clearing by a Clearing Member, shall be held in confidence by Nadex Clearing and shall not be made known to any other Person except as follows:

- (a) With the consent of the Clearing Member;

- (b) To a Government Agency or the regulatory authority of any foreign jurisdiction, if Nadex Clearing is requested or legally required to do so by such Government Agency;
- (c) Pursuant to legal process;
- (d) To an exchange (including, without limitation, any contract market, swap execution facility or other trading facility) of which such Clearing Member is a member, provided that information relating to positions, margin payments and deliveries that is furnished to an exchange shall relate solely to contracts traded on that exchange;
- (e) To a Self-Regulatory Organization of which such Clearing Member is a member;
- (f) To any Person providing services to Nadex Clearing, subject to appropriate confidentiality requirements;
- (g) To the Board, any Committee, Nadex Clearing's Officers, employees, attorneys and auditors, and to agents and independent contractors that have been engaged by Nadex Clearing who require such information in connection with the discharge of their duties to Nadex Clearing; and
- (h) As otherwise permitted under the Rules.

#### **704. Information-Sharing Agreements**

- (a) Nadex Clearing may enter into information-sharing agreements or other arrangements or procedures to coordinate surveillance with the Exchange and with other markets or clearing organizations on which Contracts or financial instruments related to Contracts trade or are cleared. As part of any information-sharing agreements or other arrangements or procedures adopted pursuant to this Rule, Nadex Clearing may, among other things:
  - (i) provide market surveillance reports to other markets and clearing organizations;
  - (ii) share information and documents concerning current and former Clearing Members with other markets and clearing organizations;
  - (iii) share information and documents concerning ongoing and completed investigations with other markets and clearing organizations; and/or

- (iv) require its Clearing Members to provide information and documents to Nadex Clearing at the request of other markets or clearing organizations with which Nadex Clearing has an information-sharing agreement or other arrangements or procedures.
- (b) Nadex Clearing may enter into an information-sharing arrangement with any Person or body (including, without limitation, any Government Authority or any Self-Regulatory Organization) if Nadex Clearing (i) believes that such Person or body exercises a legal or regulatory function under any law or regulation, or a function comprising or associated with the enforcement of a legal or regulatory function, or (ii) considers such arrangement to be in furtherance of Nadex Clearing's purpose or duties under applicable law. Nadex Clearing may disclose to any Person or body information concerning or associated with a Clearing Member or other Person that Nadex Clearing believes is necessary and appropriate in exercising a legal or regulatory function (including, without limitation, information concerning any aspect of the business of Nadex Clearing) whether or not a formal arrangement governing the disclosure exists or a request for information was made.

**705. Trading by Officers and Employees Prohibited.**

- (a) No Officer or employee of Nadex Clearing shall:
  - (i) Trade or participate directly or indirectly in any transaction in any futures contract or related option or swap, except to the extent necessary to carry out the provisions of Rule 503 or as otherwise permitted pursuant to an exemption granted in accordance with this Rule; or
  - (ii) Disclose any material, non-public information obtained as a result of such Person's employment with Nadex Clearing where the Officer or employee has or should have a reasonable expectation that the information disclosed may assist another Person in trading any commodity interest; provided, that an employee is not prohibited from making disclosures in the course of the employee's duties, or to another Self-Regulatory Organization, court of competent jurisdiction or representative of any agency or department of the federal or state government acting in his or her official capacity.
- (b) Nadex Clearing may adopt certain exemptions from the trading prohibition contained in paragraph (a)(i), provided that any such exemptions shall be consistent with CFTC Regulations.
- (c) All terms used in this Rule shall be construed consistently with the definitions appearing in CFTC Regulation 1.59.

**706. Forms; Facsimile Signatures.**

- (a) Nadex Clearing shall prescribe the form, method and time of delivery of any application, list, notice or other document required pursuant to these Rules or the policies or practices of Nadex Clearing.
- (b) A Clearing Member or a Clearing Member's representative may execute any document to be delivered to Nadex Clearing or to any other Clearing Member pursuant to these Rules or any policy or practice of Nadex Clearing by means of a mechanically or electronically reproduced facsimile signature if it otherwise satisfies any requirements of Nadex Clearing for use of such facsimile signatures.

**707. Just and Equitable Principles of Trade; Acts Detrimental to the Interest or Welfare of Nadex Clearing.**

- (a) Nadex Clearing shall have the power to suspend or revoke clearing privileges or authorize the assessment of fines or charges against Clearing Members for engaging in conduct inconsistent with just and equitable principles of trade.
- (b) Nadex Clearing shall have the power to suspend or revoke clearing privileges or authorize the assessment of fines or charges against Clearing Members for engaging in acts detrimental to the interest or welfare of Nadex Clearing.

**708. Governing Law; Legal Proceedings.**

- (a) The Rules of Nadex Clearing, and all rights and obligations thereunder, shall be governed by and construed in accordance with the laws of the State of Illinois, without giving effect to the conflict of law provisions thereof.
- (b) Any action, suit or proceeding against Nadex Clearing, its Officers, directors, limited liability company members, employees, or agents, must be brought within one (1) year from the time that a cause of action has accrued. Any such action, suit or proceeding shall be brought in the State or Federal courts located within Chicago, Illinois. Each Clearing Member expressly consents, for itself and its Authorized Representatives, to the jurisdiction of any such court, waives any objection to venue therein, and waives any right it may have to a trial by jury.
- (c) In the event that a Clearing Member or an affiliate of such Clearing Member fails to prevail in a lawsuit or other legal proceeding instituted by such Clearing Member against (i) Nadex Clearing or (ii) any affiliate of Nadex Clearing or any of their respective officers, directors, equity holders, employees, agents, or any member of any Committee, and related to the business of Nadex Clearing, such Clearing Member shall pay to Nadex Clearing all reasonable expenses, including attorneys' fees, incurred by Nadex Clearing in the defense of such proceeding. This paragraph (c) shall not apply to Nadex Clearing disciplinary actions, appeals thereof, or an instance in which the Board or the President has granted a waiver of the provisions hereof.